

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

E. I. duPONT deNEMOURS
& COMPANY, INC.,

PLAINTIFF

VS.

ROLFE CHRISTOPHER AND
GARY CHRISTOPHER,

DEFENDANTS

CIVIL ACTION NO. 6258.

DEPOSITION OF ROLFE CHRISTOPHER.

(ORIGINAL).

FILED

U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

FEB 9 1971

JAMES R. COONEY, CLERK

BY
DEPUTY

Lazel E. Studdard

ODESSA J. SMITH
SHORTHAND COURT REPORTER
BEAUMONT, TEXAS

Ref #1080

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 BEAUMONT DIVISION

4 E. I. duPONT deNEMOURS
5 & COMPANY, INC.,

6 PLAINTIFF

7 VS.

8 ROLFE CHRISTOPHER AND
9 GARY CHRISTOPHER,

10 DEFENDANTS

11 CIVIL ACTION NO. 6258

12 * * * *

13 DEPOSITION AND ANSWERS of ROLFE CHRISTOPHER, called
14 as a witness by plaintiff, taken before Odessa J. Smith, Court
15 Reporter and/or Notary Public in and for Jefferson County,
16 Texas, in the offices of Orgain, Bell & Tucker, at Beaumont,
17 Texas, on the 5th day of February, 1971, beginning at 12:00
18 o'clock Noon, pursuant to the following stipulation and waiver
19 of counsel.

20 A P P E A R A N C E S

21 ROBERT Q. KEITH, of the law firm of Mehaffy, Weber,
22 Keith & Gonsoulin,

23 Attorneys for Plaintiff;

24 DAVE KREAGER, of the law firm of Orgain, Bell &
25 Tucker,
26

ODESSA J. SMITH
Shorthand Court Reporter
Beaumont, Texas

1 Attorneys for Defendants; and

2 ED GREEN, of the law firm of Weller, Wheelus, Green
3 & Brocato.

4 * * *

5 IT IS STIPULATED AND AGREED by and between counsel
6 for the respective parties hereto that the deposition of the
7 witness named in the caption hereto may be taken at this time
8 and place by the herein named Court Reporter and/or Notary
9 Public of Jefferson County, Texas; time, notice, the issuance
10 of a commission, reading of the deposition by the witness and
11 signing of same by him being waived; and that the said deposi-
12 tion, or any part thereof, when so taken, may be used on the
13 trial of this cause with the same force and effect as if the
14 witness were present in Court and testifying in person.
15

16
17 IT IS FURTHER STIPULATED AND AGREED by the counsel
18 for the respective parties hereto that the necessity for pre-
19 serving objections at the time of taking is waived, and that
20 any and all legal objections to this deposition, or any part
21 thereof, may be urged at the time same is sought to be offered
22 in evidence on the trial of this cause.
23

24
25
26 * * *

ODESSA J. SMITH
Shorthand Court Reporter
Beaumont, Texas

ROLFE CHRISTOPHER, having been first duly sworn,
testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. KEITH:

Q. You are the same Rolfe Christopher who is a defendant in this suit?

A. Yes.

Q. Rolfe, this is a continuation of the deposition you gave on April 22, 1969. Under the understanding of the parties I am going to ask you only a few limited questions today and we may recess it until you have had an opportunity to collect your thoughts and organize yourself a little bit. At that time I asked you who it was who employed you to take photographs of the duPont plant near Beaumont, which the records show were taken on March 19, 1969, now I ask you again who was the person or the client as you described him who employed you to take those photographs?

A. Is it all right for me to answer that (speaking to Mr. Kreager)?

MR. KREAGER: Yes.

A. Eber Peters.

Q. All right, who is the lady to whom you delivered the photographs?

1 A. Mrs. Jim Saxon.

2 Q. All right, Now Eber Peters' office is located
3 where?

4 A. In the San Jacinto Building, or was then.

5 Q. Here in Beaumont?

6 A. In Beaumont.

7 Q. Now did he tell you who he was representing?

8 A. No.

9 Q. Did you ask him?

10 A. No.

11 Q. Did you ask him why he wanted the pictures?

12 A. No.

13 Q. Did he tell you?

14 A. No.

15 Q. Did you have any discussion as to whom he was
16 going to so deliver, or for whom he was going to deliver the
17 pictures?

18 A. No.

19 Q. Now you described there was an envelope in which
20 you kept the negatives, and it had the customer or client's
21 name on it?

22 A. Uh-huh.

23 Q. Whose name was on that envelope?

1 A. I don't know. Whatever envelope I brought was
2 just like it was then to you.

3 Q. Well, we didn't see it.

4 Q. You didn't see the negative envelope, Bob?

5 Q. No, sir.

6 MR. KREAGER: Didn't you deliver it to them?

7 Q. Did it have a name on it other than Eber Peters?

8 A. I don't remember, honestly I don't.

9 MR. KREAGER: Could it have any other name on it than Eber
10 Peters?

11 A. No, it wouldn't, but I don't know what was on
12 the negative envelope, I really don't.

13 Q. All right, we are going to recess very briefly, I
14 want you to ascertain that, if you will.

15 A. Well, I don't have it. I mean it hasn't been in
16 your possession, Bob?

17 Q. What about the bill?

18 A. I put the bill in the envelope like I usually do.

19 Q. All right, to whom was the bill directed?

20 A. My client, Eber Peters.

21 Q. That's what I want to know is what was the name of
22 the debtor on the bill?

23 A. On the bill was Eber Peters.

1 Q. All right, was it Peters Consulting Company?

2 A. I believe I just put Eber Peters on it, I guess.

3 Q. Do you know under which Eber Peters operates?

4 A. No.

5 Q. Is it Eber H. Peters & Associates?

6 A. No.

7 Q. All right, has Eber Peters or someone for his
8 account paid the bill?

9 A. Yes.

10 Q. And who made payment?

11 A. Who paid me?

12 Q. Yes.

13 A. Eber.

14 Q. Was that a check drawn on his own funds?

15 A. No, he paid it by his son.

16 Q. And who is his son?

17 A. I don't know his name.

18 Q. What do you mean he paid it by his son?

19 A. His son paid the bill to me.

20 Q. Did he pay you in cash?

21 A. Yes.

22 Q. Just green dollars?

23 A. Yes.

1 Q. All right, and was that after this lawsuit was
2 filed?

3 A. Yes.

4 Q. All right.

5 A. Pardon me, I am almost sure it was.

6 Q. The bill was not paid at the time we took your
7 deposition?

8 A. No, sofar as I remember it wasn't, Bob, but what
9 I told you at that time was right.

10 Q. But the bill has been paid?

11 A. Yes, the bill has been paid.

12 Q. Can you develop the date it was paid by going
13 back and looking at your records?

14 A. No.

15 MR. KREAGER: Look at your deposits.

16 A. I don't put my checks or cash or anything by
17 individual things, you know, I don't.

18 Q. Maybe by the size of it so I will be able to tell
19 the exact date of deposit.

20 A. I don't know that I can give the exact date on
21 that because I never put like Dave Kreager --

22 MR. KREAGER: If you can, that's fine, and if you can't, that's
23 fine.
24
25
26

1 Q. Now do you remember whether they were in
2 denominations of one hundred, fifty or twenty?

3 A. I don't remember.

4 Q. The bill was paid by green cash?

5 A. Right.

6 Q. Has Peters or anyone acting for him made any
7 other payments to you since your deposition was taken April
8 22, 1969?

9 A. No.

10 Q. Has he paid you or reimbursed you for any
11 attorneys fees or expenses you may have incurred?

12 A. All this was handled by Mr. Kreager.

13 Q. Has it come through you?

14 MR. KREAGER: Have you gotten any money at all?

15 Q. That's not my question. Has the money come
16 through you?

17 A. No, sir.

18 Q. Has it been handed to you or delivered to you
19 or were you a co-payee?

20 A. No.

21 Q. Now Eber H. Peters & Associates to your knowledge
22 is not a law firm or a lawyer, is it?

23 A. No.

1 MR. KREAGER Q. He did not represent to you that he was acting
2 as a lawyer?

3 A. No.

4 Q. Now you referred to a secretary to whom you
5 delivered the pictures in March of 1969, and that lady's name
6 was what?

7 A. Mrs. Saxon.

8 Q. Now who besides Eber Peters, Mrs. Saxon and
9 Peters' son in this organization have you dealt with relating
10 to these photographs?

11 A. I believe that's all sofar as I can remember.

12 Q. Does a Mr. Cable work for him?

13 A. That's right.

14 Q. Have you dealt with him?

15 A. As well as I can remember I haven't dealt with
16 him on those photographs.

17 MR. KREAGER Q. Have you taken any other pictures of duPont since
18 March 19, 1969?

19 A. No.

20 Q. Have you taken any other photographs for Peters?

21 MR. KREAGER: Do you remember?

22 Q. Yeah, I remember -- no.

23 Q. Have you had any discussion with Peters or any

24 conference about these photographs since April 22, 1969?

DESSA J. SMITH
Shorthand Court Reporter
Beaumont, Texas

1 MR. KREAGER: Yeah, I do, but subject to my objection, and,
2 Rolfe -- I don't know whether he knows it, but he is not going
3 to reimburse what Rolfe paid me.

4 Q. You have paid some money?

5 A. Yes.

6 Q. And that has been direct expense to you for which
7 there has been no reimbursement?

8 A. No.

9 Q. Is that correct?

10 A. Right.

11 Q. Now I have a number of other questions which
12 may require you to refresh your memory of this deposition,
13 and I don't think it quite fair for me to go into it until
14 you have. Why don't we recess for the moment, subject to the
15 agreement we can get back together, and I will send you a little
16 note outlining what items that we would need.

17 MR. KREAGER: Give him a little time because I don't see any
18 reason to have him refresh his memory now because knowing
19 Rolfe, he will forget it before the next time.

20
21
22
23
24 CLOSE OF THE DEPOSITION.

1 A. About the photographs, no.

2 Q. Or about this matter?

3 A. No.

4 Q. None whatsoever?

5 A. I have seen him around, hi.

6 MR. KREAGER: About this matter?

7 A. No, no, not about this.

8 Q. You have had no conference or telephone call or
9 discussion at all?

10 A. No.

11 Q. You said he had arranged to underwrite the ex-
12 penses of this litigation, to your knowledge has he done so?

13 MR. KREAGER: Bob, I really think all of that is kind of
14 privileged, but subject to that objection.

15 Q. My question is were you out any money because of
16 this litigation?

17 A. Yes.

18 Q. Expenses that you have had to pay attorneys?

19 A. Yes.

20 Q. Now Peters agreed to reimburse you those expenses?

21 MR. KREAGER: Again, Bob, I kind of think this is privileged.

22 Q. I am not trying to harass him about it, if you
23 think it is.

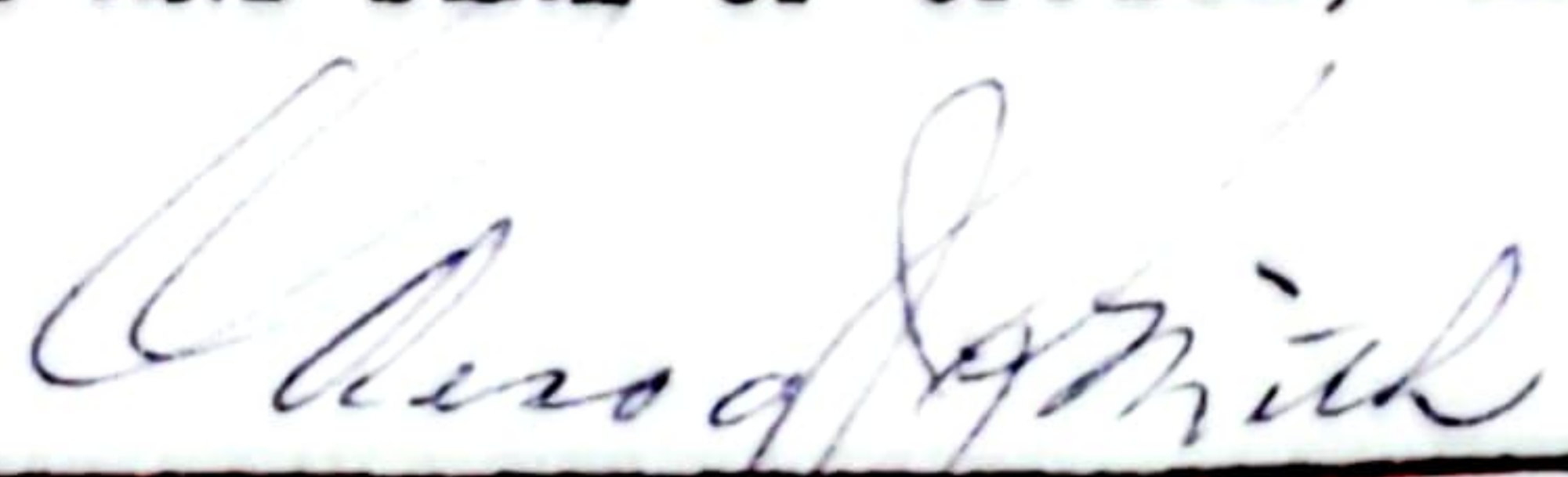
1 THE STATE OF TEXAS

2 COUNTY OF JEFFERSON

3 I, Odessa J. Smith, a Notary Public in and for
4 Jefferson County, Texas, do hereby certify that the facts
5 stated by me in the caption to the foregoing deposition are
6 true; that the foregoing deposition of ROLFE CHRISTOPHER,
7 the witness, was, at the time named, taken down correctly in
8 shorthand by me, both the questions propounded by the attorneys
9 and the answers given by the witness, in accordance with the
10 stipulation and waiver hereto attached, and afterwards trans-
11 cribed correctly on the typewriter, all to the best of my
12 skill and ability, and the foregoing is a true and correct
13 transcript of the testimony given by the witness at said time;
14 said witness being by me first carefully examined, cautioned
15 and sworn to tell the truth, the whole truth and nothing but
16 the truth.
17

18
19 I FURTHER CERTIFY that I am neither attorney nor
20 counsel for, nor related to or employed by any of the parties
21 to the action in which this deposition is taken, and, further,
22 that I am not a relative or employee of any counsel or employed
23 by the parties hereto or financially interested in the action.
24

25 GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the
26 6th day of February, 1971.


ODESSA J. SMITH, NOTARY PUBLIC
IN AND FOR JEFFERSON COUNTY, TEXAS.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

SEP 29 1970

JAMES R. COONEY, CLERK

BY DEPUTY MARGARET DRIVER

E. I. duPONT deNEMOURS &
COMPANY, INC.

§

VS.

§

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

§

REPLY TO MOTION OF DEFENDANT
SEEKING TO AVOID MANDATE
OF COURT OF APPEALS

TO THE HONORABLE UNITED STATES DISTRICT COURT:

This brief reply is made to the Motion of Defendants seeking to have the Court reinstate its order of stay entered herein June 5, 1969.

Upon July 20, 1970, the Court of Appeals affirmed the interlocutory judgment of this Court and directed that the case be "remanded to that court for proceedings on the merits".

Upon September 4, 1970, the Court of Appeals issued its mandate and judgment, filed in this Court upon September 8, 1970. At no time have Defendants sought a stay of the mandate or taken any steps whatsoever to avail themselves of the provisions of Rule 41, Federal Rules of Appellate Procedure. If they wanted Supreme Court review prior to the issuance of the mandate ordering this cause to proceed upon the merits, the remedy was available to them in the Court of Appeals. They did nothing.

Each time Plaintiff has sought to take the deposition

of the Defendants, delay has been the defense. Upon April 11, 1969, Defendants sought to postpone the taking of their depositions. Upon June 5, 1969, after the depositions were taken and the Court ordered Defendants to complete their deposition, Defendants sought to perfect an interlocutory appeal, representing to this Court, "At the very least, a ruling by the Court of Appeals would greatly facilitate and make highly probable settlement of this litigation".

Now that their depositions are sought to be taken to comply with orders of both the Trial Court and Appellate Court, Defendants for the third time seek delay, without any showing whatsoever of the "cause" for extending the issuance of mandate contemplated by Rule 41, Federal Rules of Appellate Procedure.

Each day that passes precipitates further harm and damage upon your Plaintiff from the acts of Defendants in photographing and then publishing the secrets of your Plaintiff. Delay works to the distinct disadvantage of your Plaintiff, who has availed itself of every legal remedy known to the law.

No harm will inure to Defendants, who apparently thought so little of their rights as not even to seek a stay of the Appellate Court mandate, which they now seek from this Court, without any attempt to show cause therefore.

Defendants motion to reinstate should be denied.

Respectfully submitted,

MEHAFFY, WEBER, KEITH & GONSOULIN
Attorneys for Plaintiff

By Robert Q. Keith

1400 San Jacinto Building
Beaumont, Texas

Of Counsel

CERTIFICATE OF SERVICE

A true copy of this Motion was delivered to Mr. David Kreager, Attorney for Defendants, this 29th day of September, 1970.

Robert Q. Keith
ROBERT Q. KEITH

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

M APR 11 1969 19

E. I. duPONT de NEMOURS
COMPANY, INC.

§

James R. Cooney, Clerk, U. S. Court

VS.

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By MARGARET DRIVER
DEPUTY

CIVIL ACTION 6258

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

§

§

Motion to Postpone Taking of Deposition of Defendants

I.

Defendants, Rolfe Christopher and Gary Christopher, show unto the Court that they have filed herein their motion to dismiss for lack of jurisdiction and motion to dismiss for failure to state a claim upon which relief can be granted, and noticed such motions for hearing on April 23, 1969, at 10 a.m., or as soon thereafter as the Court can hear the same. Defendants will submit brief to the Court and will desire oral argument on such motions.

2.

Defendants have been served with notice that plaintiff intends to take their oral deposition on Monday, April 14, 1969, which is less than 20 days after service of summons and prior to the time defendants are required to answer. Defendants move that the Court vacate its ex parte order authorizing the taking of such depositions on April 14, and would show unto the Court:

(a) The depositions should be postponed until the Court has determined the motion to dismiss for lack of jurisdiction and motion to dismiss for failing to state a claim upon which relief can be granted.

(b) No proper basis is set forth in the motion other than it states that injunctive relief is sought, does not constitute good cause for allowing a deposition to be taken prior to the time defendants' answer is filed. Furthermore,

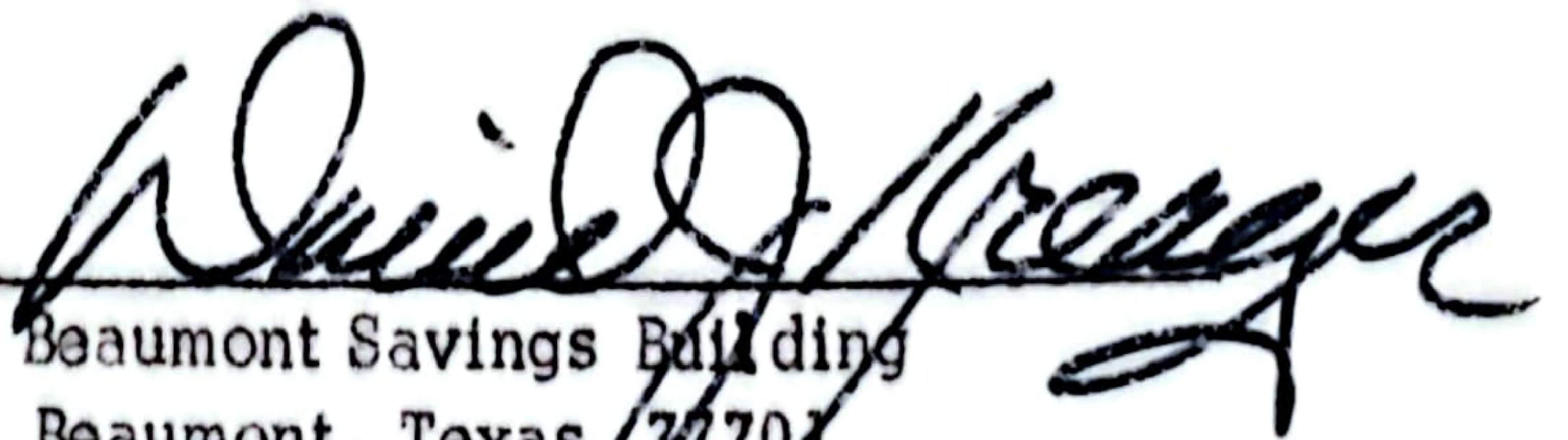
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as shown by defendants' motion to dismiss, the primary purpose of the deposition relates to purely a collateral matter not relevant to any issues between plaintiff and these defendants.

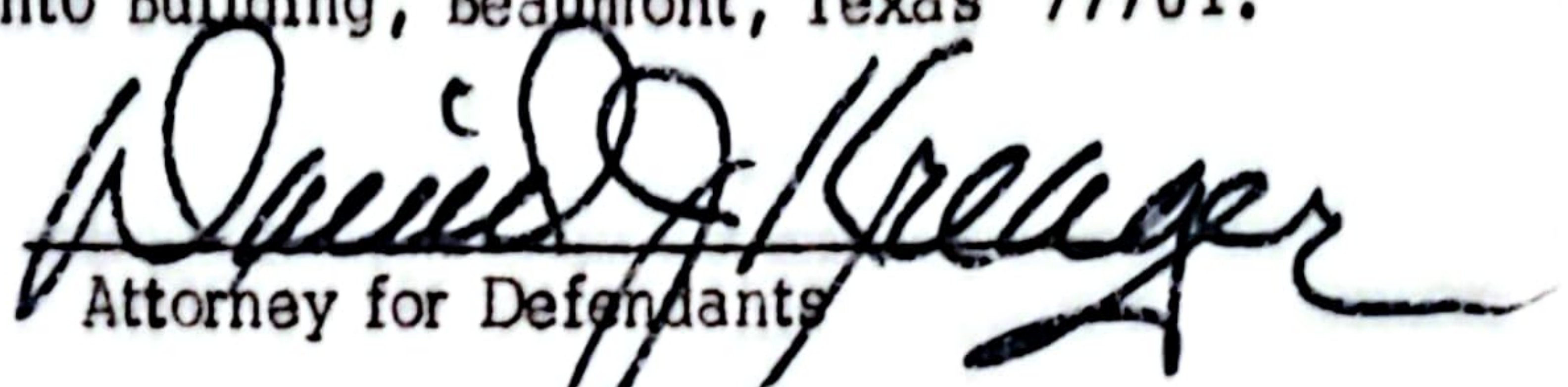
3.

Defendants further show unto the Court that the motion is insufficient to state any grounds for the taking of the depositions, in that it wholly fails to state the nature of the information plaintiff seeks to obtain as a predicate for injunctive relief. It is defendants' information and belief that plaintiff has all of the information desired, except information on an entirely collateral matter not relevant to any issue between plaintiff and defendants, to wit, the identity of those for whom defendants are alleged to have taken the pictures in question. The identity of such persons is not relevant to any issue between plaintiff and defendants and is not a proper matter for discovery.

WHEREFORE, defendants move the Court to vacate the order heretofore granted, authorizing plaintiff to take their oral deposition on April 14, and to postpone the taking of said deposition until after the Court has passed upon the motion to dismiss for want of jurisdiction and motion to dismiss for failing to state a claim upon which relief can be granted.


Beaumont Savings Building
Beaumont, Texas 77701
Attorney for Defendants

The foregoing motion was served by mailing copies thereof in the United States mails on April 11, 1969, to plaintiff's attorneys, Mehaffy, Weber, Keith & Gonsoulin, 1400 San Jacinto Building, Beaumont, Texas 77701.


Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED

APR 11 1969

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James R. Cooney, Clerk, U. S. Court

By

Margaret Driver
DEPUTY

I. E. duPONT de NEMOURS
COMPANY, INC. §

VS §

ROLFE CHRISTOPHER AND §
GARY CHRISTOPHER §

CIVIL ACTION NO. 6258

ORDER

On this 11th day of April, 1969, came on to be considered
Defendants' Motion to Dismiss for Lack of Jurisdiction and Motion
to Postpone Taking of Deposition of Defendants in the above action;

It is, therefore, ORDERED by the court that the said Motions
be heard on Monday, April 14, 1969 at 10:00 A.M. and that the
depositions of defendants be postponed pending such hearing, at
which time the court will decide whether the depositions will go
forward.

W. D. D. D.
JUDGE PRESIDING

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

MAY 2 1969

James R. Cooney, Clerk, U. S. Court

Virginia R. Sens

By _____ DEPUTY

E. I. duPONT deNEMOURS & CO., §
INC. §

VS. §

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER and §
GARY CHRISTOPHER §

MOTION TO COMPEL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW plaintiff in the cause above captioned, E. I. duPont deNemours & Co., Inc. and respectfully moves and prays, pursuant to Rule 37, that defendants Rolfe Christopher and Gary Christopher be directed to answer the following questions propounded to him upon his oral deposition, and in support would show unto the Court:

I.

Pursuant to Order of the Court and subsequent agreement of counsel the oral deposition of Rolfe Christopher was taken upon April 22, 1969. Upon certain pages of the said Christopher's testimony, which are attached hereto and labeled Exhibit A, the defendant Rolfe Christopher was asked numerous questions upon oral examination relating to the identity of the person, firm or corporation who had employed him to take photographs of plaintiff's Beaumont Works, and particularly the Methanol Plant thereof under construction. In each instance, as reflected upon the foregoing attachments defendant declined and refused to answer questions relating to the identity of the person who engaged him to take such photographs and to whom he circulated, published or otherwise showed said photographs.

II.

Plaintiff would show that the evidence sought is material and relevant to the issues involved in this case and is not privileged from discovery.

III.

In further support of this Motion, plaintiff would show that upon oral examination of defendant Rolfe Christopher he stated that he took the photographs in question at the instance of a third person and that the only reason that he refused to disclose the identity of the third person was that the latter did not want his identity known to plaintiff. Defendant Gary Christopher stated that the only reason he refused to disclose the identity of the third person was, insofar as plaintiff is concerned, "none of your business."

WHEREFORE, premises considered, plaintiff prays that defendants Rolfe Christopher and Gary Christopher be directed to answer upon oral examination questions relating to the identity of the person, firm or corporation who engaged them or either of them to take the photographs of plaintiff's plant in question and to whom they have delivered, circulated or published said photographs, and to whom they or either of them have directed a statement for services rendered.

Respectfully submitted,

MEHAFFY, WEBER, KEITH & GONSOULIN
Attorneys for Plaintiff

By

Arto O. Kern

Of Counsel

1400 San Jacinto Building
Beaumont, Texas

CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing Motion has been forwarded to counsel for defendants simultaneous with the filing hereof.

Arto O. Kern

FILED

U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

OCT 1 - 1970

BEAUMONT DIVISION

JAMES R. COONEY, CLERK

BY DEPUTY IMOGENE R. JONES

E. I. duPONT deNEMOURS
& COMPANY, INC.§
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§
§
§
§

VS.

CIVIL ACTION NO. 6250

ROLFE CHRISTOPHER and
GARY CHRISTOPHERNOTICE OF INTENTION TO TAKE DEPOSITION

TO: Rolfe Christopher and Gary Christopher and their Attorneys,
Orgain, Bell & Tucker, Beaumont Savings Bldg., Beaumont,
Texas

Please be advised that Plaintiff in the cause above captioned, by and through its attorney of record, will take the oral deposition of Rolfe Christopher and Gary Christopher commencing at 9:30 A.M., Friday, October 9, 1970 in the offices of Orgain, Bell & Tucker, 4th Floor, Beaumont Savings Building, Beaumont, Texas, which depositions will be used as evidence in the captioned cause.

Please be further advised that subpoena will be issued for each of said witnesses, both of whom are parties-defendant herein, to bring with them to said deposition for inspection, copying, and interrogation at said deposition, the original or copies of all correspondence, statements, bills, ledgers, statements of account, memoranda or other writings which they may have (other than to or from their attorneys) relating to or arising from Defendants having taken aerial photographs of Plaintiff's Beaumont Works, on or about March 19, 1969.

Respectfully submitted,

MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701By: Rolfe Keith
Attorneys for Plaintiff

MEHAFFY, WEBER, KEITH & GONSOULIN

ATTORNEYS
BEAUMONT, TEXAS

FILED

U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

OCT 1 - 1970

BEAUMONT DIVISION

JAMES R. COONEY, CLERK

BY DEPUTY IMOGENE R. JONES

E. I. duPONT deNEMOURS
& COMPANY, INC.

§

§

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VS.

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CIVIL ACTION NO. 6258

§

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

§

§

APPLICATION FOR SUBPOENA

TO THE DISTRICT CLERK, UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF TEXAS

Plaintiff in the cause above captioned respectfully requests the issuance of a subpoena to be served upon Rolfe Christopher, Defendant herein, who resides at 670 Zavalla Street, Beaumont, Jefferson County, Texas in accordance with the Notice attached and personally delivered to counsel for Defendants upon september ²⁰~~19~~, 1970.

Respectfully submitted,

MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701

By:

Roy O. Keith

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
FEB 22 1971

E. I. duPONT deNEMOURS
& COMPANY, INC.

VS.

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

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CIVIL ACTION NO. 6258

JAMES R. COONEY, CLERK
BY DEPUTY MARGARET DRIVER

NOTICE OF INTENTION TO TAKE DEPOSITION

TO: Rolfe Christopher and Gary Christopher and their attorneys,
Orgain, Bell & Tucker, Beaumont Savings Building, Beaumont,
Texas.

Please be advised that Plaintiff in the cause above captioned, by and through its attorneys of record, will take the oral deposition of E. H. Peters and Mrs. Jim Saxon, each of whom are residents of Beaumont, Jefferson County, Texas, commencing at 1:30 p.m. Friday, February 26, 1971, in the offices of Orgain, Bell & Tucker, Fourth Floor, Beaumont Savings Building, Beaumont, Texas, which depositions may be used as evidence in the captioned cause. You are invited to attend and cross-examine.

Please be further advised that subpoena will be issued for each of said witnesses to bring with them to said deposition for inspection, copying, and interrogation at said deposition, the original or copies of all correspondence, statements, receipts, bills, ledgers, statements of account or payment, memoranda or other writings in their possession or subject to their control (other than privileged communications to or from their attorneys) relating to or arising out of and undertaking whereby Rolfe Christopher or Gary Christopher were requested by E. H. Peters to take photographs of the Beaumont Works of E. I. DuPont deNemours & Company, Inc., which photographs were taken on or about March 19, 1969.

FILED

IN THE UNITED STATES DISTRICT COURT U. S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS EASTERN DISTRICT OF TEXAS
FEB 22 1971

BEAUMONT DIVISION

JAMES R. COONEY, CLERK

E. I. duPONT deNEMOURS
& COMPANY, INC.

BY MARGARET DRIVER

VS.

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

MOTION

TO THE HONORABLE JUDGE OF SAID COURT:

Upon June 5, 1969, the Court entered its Order Overruling Defendants' Motions to Dismiss and Motion for Summary Judgment and Granting Plaintiff's Motion to compel answer to questions on depositions, allowing an interlocutory appeal and staying further proceedings in this Court until termination of the interlocutory appeal.

The United States Court of Appeals, Fifth Circuit, has now affirmed the Judgment of this Honorable Court, the mandate having issued and been filed September 8, 1970.

Petition for Writ of Certiorari to the Supreme Court of the United States was denied January 25, 1971.

It is accordingly proper that the Court's Order staying further proceedings be vacated and this cause allowed to proceed in accordance with law.

Respectfully submitted,

MEHAFFY, WEBER, KEITH & GONSOLIN
Attorneys for Plaintiff

1400 San Jacinto Building
Beaumont, Texas 77701

By: Robert Q. Keith Of Counsel

CERTIFICATE OF SERVICE

A copy of the foregoing has been served upon Mr. David Kreager, attorney for Defendants, upon this the 19 day of February, 1971, by first class mail, properly posted.

Robert Q. Keith
ROBERT Q. KEITH

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAR 22 1971

BEAUMONT DIVISION

JAMES R. COONEY, CLERK

BY DEPUTY, IMOGENE R. JONES

E. I. duPONT de NEMOURS
& COMPANY, INC.

§

VS.

§

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER AND
GARY CHRISTOPHER

§

NOTICE OF INTENTION TO TAKE DEPOSITION

TO: Rolfe Christopher and Gary Christopher and their attorneys,
Orgain, Bell & Tucker, Beaumont Savings Building,
Beaumont, Texas.

Please be advised that plaintiff in the cause above captioned, by and through its attorneys of record, will take the oral deposition of E. H. Peters and Mrs. Jim Saxon, each of whom are residents of Beaumont, Jefferson County, Texas, commencing at 10:00 A.M. Thursday, March 25, 1971, in the offices of Weller, Wheelus, Green & Brocato, Beaumont Savings Building, Beaumont, Texas, which depositions may be used as evidence in the captioned cause. You are invited to attend and cross-examine.

Please be further advised that subpoena will be issued for each of said witnesses to bring with them to said deposition for inspection, copying and interrogation at said deposition, the original or copies of all correspondence, statements, receipts, bills, ledgers, statements of account or payment, memoranda or other writings in their possession or subject to their control belonging to E. H. Peters or E. H. Peters and Associates (a corporation), relating to or arising out of an undertaking whereby Rolfe Christopher or Gary Christopher were requested

by E. H. Peters to take photographs of the Beaumont Works
of E. I. duPont de Nemours & Company, Inc., which photographs
were taken on or about March 19, 1969.

Respectfully submitted,

MEHAFY, WEBER, KEITH & GONSOULIN
Attorneys for Plaintiff,

By Robert Q. Keith
Of Counsel

1400 San Jacinto Building
Beaumont, Texas

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and
foregoing notice of intention to take deposition was forwarded
to Mr. Dave Kreager, Orgain, Bell & Tucker, Beaumont Savings
Building, Beaumont, Texas, attorney for defendants, this
22nd day of March, 1971.

Robert Q. Keith
ROBERT Q. KEITH

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

MAR 22 1971

E. I. duPONT deNEMOURS &
COMPANY, INC.

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JAMES R. COONEY, CLERK

BY DEPUTY, ROSALIE M. TRAHAN

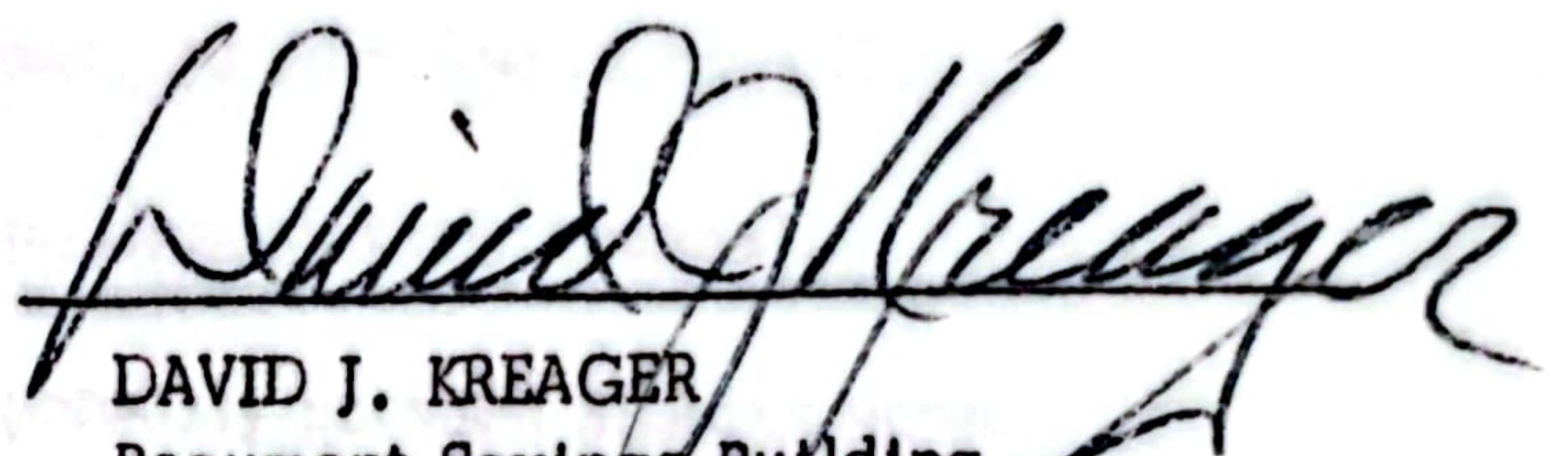
VS. VS

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

JURY DEMAND


COMES NOW the defendants, Rolfe Christopher and Gary Christopher, and here and now make demand for jury trial on all issues herein and requests that said cause be placed upon the jury docket.


DAVID J. KREAGER
Beaumont Savings Building
Beaumont, Texas 77701

ATTORNEY FOR DEFENDANTS

PROOF OF SERVICE

The foregoing Jury Demand was served on the plaintiff by mailing a copy thereof in the United States Mail on the 22 day of March, 1971, to plaintiff's attorney, Mr. Robert Q. Keith, San Jacinto Building, Beaumont, Texas 77701.


ATTORNEY FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT

FILED

U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

IN AND FOR THE EASTERN DISTRICT OF TEXAS

MAY 5 1971

BEAUMONT DIVISION

JAMES R. COONEY, CLERK

BY MARGARET DRIVER
DEPUTY

E. I. duPONT deNEMOURS & CO., §
INC.

VS.

§ CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER AND
GARY CHRISTOPHER

§

DEFENDANTS' REPLY TO
PLAINTIFF'S MOTION TO STRIKE ANSWER

COMES NOW defendants in the above entitled and numbered cause and in answer to plaintiff's motion to strike answer would show the Court the following:

1.

Prior to filing formal answer herein, as provided in Rule 12, 27, defendants appeared in person and by and through their counsel. Defendants filed certain motions and vigorously pursued attacks upon the jurisdiction, to strike and summary judgment. This Court entered an order staying all proceedings in this Court. The subsequent appeals on interlocutory matter to the Fifth Circuit and the United States Supreme Court operated to extend the time for filing of formal answer herein. The Supreme Court's order overruling motion for rehearing on application for writ of certiorari was not rendered until March 8, 1971. Request for a jury trial and answer was duly filed thereafter.

2.

Subsequent to the final ruling of the Supreme Court, plaintiff has instituted discovery proceedings, taken depositions, and participated in pre-trial conferences in this Court without raising any question regarding the absence of a formal answer herein by defendants. Defendants

have likewise participated in such proceedings subsequent to the final order of the Supreme Court in this matter, and despite the absence of a formal answer, have vigorously and at all times otherwise defended this matter, and are not in default.

3.

the provisions of Rule 6, Federal Rules of Civil Procedure.

Plaintiff has not shown any prejudice resulting from the failure of the defendants to file formal answer herein, and has by its conduct waived any possible defect therein, and has consented to same, and is estopped to assert the motion to strike.

4.

Defendants have vigorously defended plaintiff's action at all stages of this proceeding, and were not in default for failure to plead or otherwise defend within the meaning of Rule 55, Federal Rules of Civil Procedure, at the time that formal answer was filed on April 27, 1971. In any event, said answer was filed and served on plaintiff prior to any motion, application or other action on the part of plaintiff seeking relief for failure of defendants to file formal answer herein, and plaintiff's motion now comes at a time when defendants have answered and plaintiff has no right to assert same.

5.

The decision of the Fifth Circuit in this matter went only to certain preliminary and interlocutory motions filed herein as to whether or not plaintiff had stated a cause of action. Said motions did not concern the merits of this case or defendants' lawful defenses thereto, nor did such motions consider any facts or defenses which will be involved in a trial of this case on its merits.

MEMORANDUM

WHEREFORE, premises considered, defendants move and pray that plaintiff's motion to strike answer herein be in all things denied. In the alternative, defendants move and pray that if plaintiff's motion be granted, that defendants be granted leave to file answer herein under the provisions of Rule 6, Federal Rules of Civil Procedure.

Wallace vs. DeWitt, 47 F.R.D. 4 (U.S.D.C. V.I. 1969.)

Suit was filed in July, 1968, no answer was filed until February 6,

Respectfully submitted,

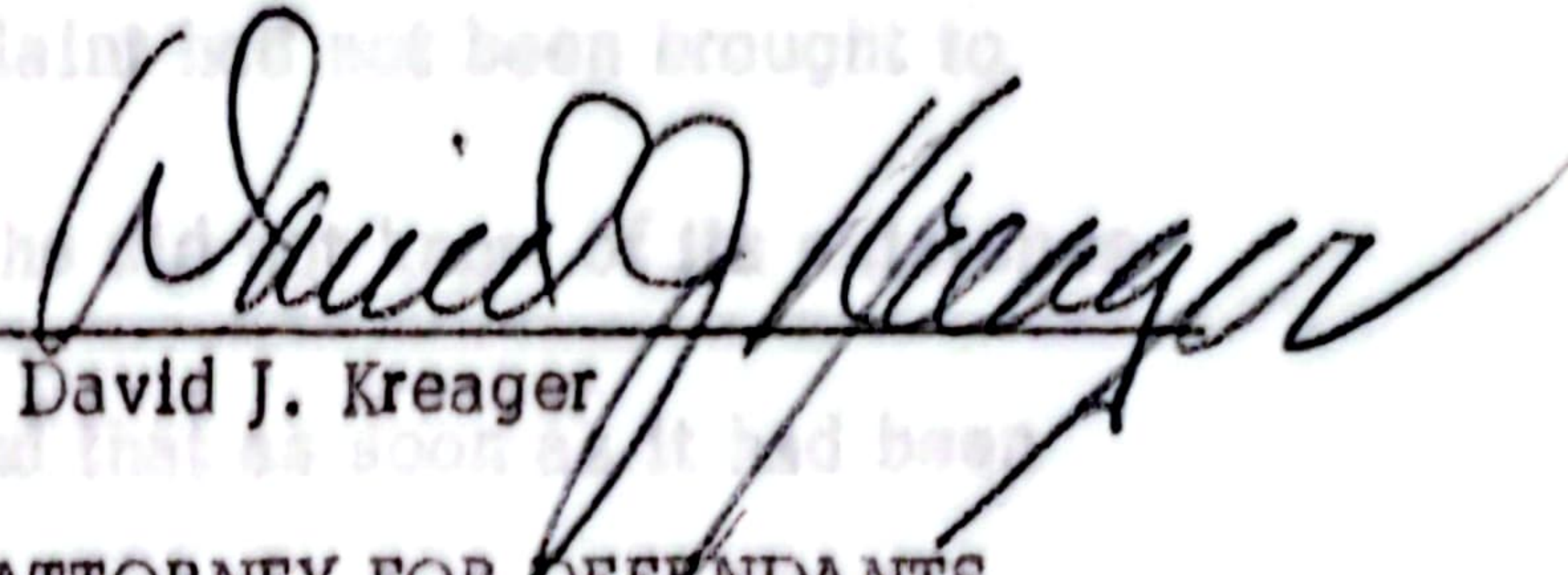
1969. After answer had been filed, the plaintiff moved for judgment

ORGAIN, BELL & TUCKER
Beaumont Savings Building
Beaumont, Texas

by default, asserting that the answer had been timely filed. The

defendant filed affidavit that the complaint had not been brought to

the attention of the attorney, and that he had not had time to file

By 
David J. Kreager

within the time required for answer, and that as soon as it had been

ATTORNEY FOR DEFENDANTS

discovered, answer was filed. The court denied the motion for default

judgment, holding that the matter of granting default was not a matter

CERTIFICATE OF SERVICE

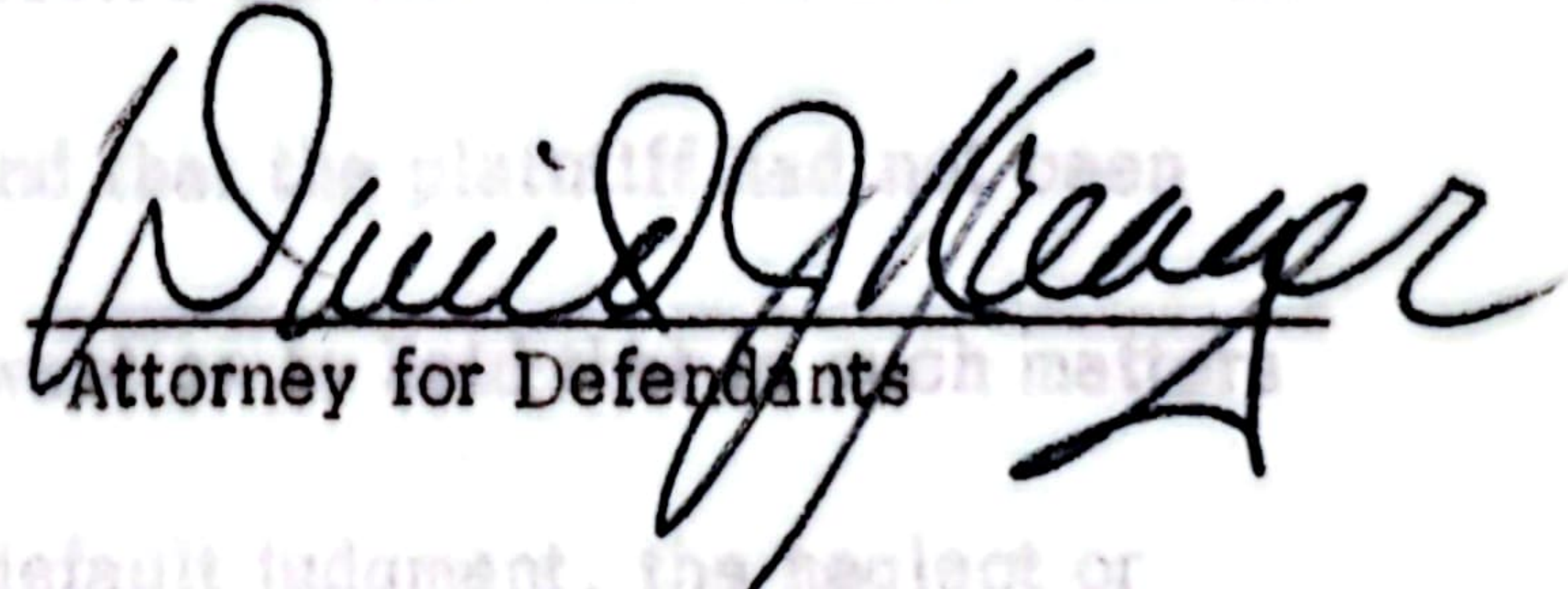
of right of the plaintiff, but was addressed to the sound discretion of

the trier of fact. The foregoing reply to plaintiff's motion to strike answer was served by mailing copy thereof in the United States mail on May 5, 1971, to plaintiff's attorney of record, Mr. Robert Q. Keith, San Jacinto Building, Beaumont, Texas 77701.

the rights of the parties. The court pointed out that the defendant had now

appeared and answered in the case, and that the plaintiff had not been

prejudiced in any manner. The court was satisfied that such matters


Attorney for Defendants

where the court was asked to enter a default judgment, the neglect or

oversight on the part of counsel in failing to file answer did not even have

to be shown to be "excusable".

See also U. S. vs. Scranton, 257 F. Supp. 557 (U.S.D.C. P.A.

1966) where the complaint was served on March 10, 1966, and answer

was filed on April 28, 1966. Motion for judgment by the plaintiff was

filed on April 29, 1966, after answer had been filed. The court in that

stated that motion for default was not as a matter of right but was addressed

MEMORANDUM

Rule 55 provides default may be entered where a party fails to plead or otherwise defend. We have done both. Our answer was on file prior to plaintiff's motion for default. For two years we have "otherwise defended" through the Fifth Circuit and the United States Supreme Court.

Wallace vs. DeWerd, 47 F.R.D. 4 (U.S.D.C. V.I. 1969.)
Suit was filed in July, 1968, no answer was filed until February 6, 1969. After answer had been filed, the plaintiff moved for judgment by default, asserting that the answer had not been timely filed. The defendant filed affidavit that the complaint had not been brought to the attention of the attorney, and that he did not know of its existence within the time required for answer, and that as soon as it had been discovered, answer was filed. The court denied the motion for default judgment, holding that the matter of granting default was not a matter of right of the plaintiff, but was addressed to the sound discretion of the trial court. The court further held that default judgments were not favored in the law, especially where they would work an injustice in the rights of the parties. The court pointed out that the defendant had now appeared and answered in the case, and that the plaintiff had not been prejudiced in any manner. The court went on to hold that in such matters where the court was asked to enter a default judgment, the neglect or oversight on the part of counsel in failing to file answer did not even have to be shown to be "excusable".

See also U. S. vs. Scranton, 257 F. Supp. 557 (U.S.D.C. P.A. 1966) where the complaint was served on March 10, 1966, and answer was filed on April 28, 1966. Motion for judgment by the plaintiff was filed on April 29, 1966, after answer had been filed. The court in that stated that motion for default was not as a matter of right but was addressed

to the sound discretion of the trial court, and pointed out that the failure to plead was largely technical in nature and that the plaintiff had shown no prejudice.

See also Albert Levine Assoc., Inc. vs. Kershner, 45 F.R.D. 450 (U.S.D.C. N.Y. 1968). In that case answer was filed one week after answer date and the plaintiff then filed motion for default for failure to file a timely answer. The motion was denied by the trial court principally on the grounds that no prejudice had been shown by the plaintiff.

ANSWER OF DEFENDANTS

COMES NOW Rolfe Christopher and Gary Christopher, Defendants in the above case, and answer plaintiff's complaint as follows:

1. Defendants admit Paragraph I.
2. Defendants deny Paragraph II.
3. Defendants admit Paragraph III.
4. Defendants can neither admit nor deny Paragraph IV because they are without sufficient knowledge or information to answer the same.
5. Defendants admit photographing portions of duplex but otherwise deny Paragraph V.
6. Defendants deny Paragraph VI.
7. Defendants have delivered the photographs to Dupont's attorney and have disclosed the name of the person who hired them; said allegations in Paragraph VII are denied.
8. Defendants deny Paragraph VIII.
9. Defendants deny plaintiff is entitled to the relief sought.

Respectfully,
Rolfe Christopher
Gary Christopher

AFFIRMATIVE DEFENSES

1. Defendants are commercial photographers practicing their profession in Jefferson County, and as such have occasion to take aerial

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

APR 27 1971

BEAUMONT DIVISION

JAMES R. COONEY, CLERK
BY DEPUTY MARGARET DRIVER

E. I. duPONT deNEMOURS &
COMPANY, INC.

§

VS.

§

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

§

ANSWER OF DEFENDANTS

COME NOW Rolfe Christopher and Gary Christopher, defendants

in the above cause, and answer plaintiff's complaint as follows:

1. Defendants admit Paragraph I.
2. Defendants deny Paragraph II.
3. Defendants admit Paragraph III.
4. Defendants can neither admit nor deny Paragraph IV because they are without sufficient knowledge or information to answer the same.
5. Defendants admit photographing portions of duPont but otherwise deny Paragraph V.
6. Defendants deny Paragraph VI.
7. Defendants have delivered the photographs to duPont's attorney and have disclosed the name of the person who hired them; said allegations in Paragraph VII are denied.
8. Defendants deny Paragraph VIII.
9. Defendants deny plaintiff is entitled to the relief sought herein.

AFFIRMATIVE DEFENSES

1. Defendants are commercial photographers practicing their profession in Jefferson County, and as such have occasion to take aerial

photographs. These photographs are taken for many purposes, including accident investigation, owners who desire to display their plants, and civic endeavors. In this regard, they were hired to fly over duPont and take aerial photographs. While they admit flying over and photographing certain of plaintiff's industrial complex, they exercised only their rights to the use of normal air space open for public use, and their rights to practice their profession as photographers. That this suit is an attempt to prohibit the defendants as members of the public from the use of the public air space and is an attempt to interfere with and abridge defendants' right to practice their profession as commercial photographers. That as such it is an unconstitutional violation of their rights as citizens under the Constitution of the United States of America and the Constitution of the State of Texas.

2. That to the best of defendants' knowledge the plaintiff had no "trade secrets" or "know-how" concerned in, photographed by, or observable in said photographs. If the plaintiff claims some unusual right or secret which would prohibit the use of aerial photography, plaintiff failed to bring the same to the knowledge of the defendants, and failed to warn anyone that photographs taken from the public air space would disclose trade secrets, and in this regard the defendants were wholly innocent and uninformed as to such secret rights being claimed by plaintiff. That such failure on the part of plaintiff to bring same to the attention of anyone who would be flying over duPont bars plaintiff's action both at equity and in law.

3. Defendants do not believe that plaintiff has any such trade secret or "know-how" which is claimable by plaintiff. However, should plaintiff have the same, plaintiff failed to take any reasonable steps or

protective measures, to prevent the same from being observed from the air, and such failure bars plaintiff's action in law and equity.

4. If plaintiff claims that it does have a trade secret, plaintiff failed to exercise its right under the laws of the United States and State of Texas designed for the protection of trade secrets and particularly the patent laws. Such laws are designed to afford notice to all parties that plaintiff is claiming some unusual right or secret, and plaintiff's failure in this regard bars his action at law and in equity.

5. Numerous photographs of an aerial nature have been made over Jefferson County, including plaintiff's facilities. To bar the defendants from photographing, when such photographs of necessity at times include portions of plaintiff's premises, is an illegal restraint of trade. In this regard, plaintiff's failure to take reasonable steps to protect any claimed unusual right or secret constitutes a waiver or estoppel of any legal right to prohibit such photography.

6. Defendants violated no law or rights in that they made no attempt to discover any unusual right or secret for the purpose of advancing anyone's business interests. Furthermore, they did not use or disclose any so-called trade secret. They have not obtained any trade secret and have only taken certain photographs. Said photographs were returned to plaintiff as well as the name of a third party who hired defendants to take said photographs, and said action is moot or functus officio.

WHEREFORE, premises considered, defendants move and pray the Court that upon trial hereof plaintiff recover none of the relief sought, that defendants go hence with their costs and for such other

and further relief as they may be justly entitled to receive, at law or in equity.

David G. Keager
Attorney for Defendants
Beaumont Savings Building
Beaumont, Texas 77701

IN RE: MURPHY, WHEBER, KEITH & GOSWOLDS
COMPANY, INC.

vs.

CIVIL ACTION NO. 8339

WILLIE CHRISTOPHER and
GARY CHRISTOPHER

PROOF OF SERVICE

I certify that a true copy of the foregoing answer was served on plaintiff by delivering a copy thereof to plaintiff's attorney of record, Mr. Robert Q. Keith, San Jacinto Building, Beaumont, Texas, 77701, this the 27th day of April, 1971.

I.

David G. Keager
Attorney for Defendants

petition was filed herein and more than seven months after defendants' dilatory plea had been overruled by final order of the Court of Appeals and the Supreme Court of the United States and these defendants stand in default of the allegations in plaintiff's petition and lack standing to file answer at this late date.

II.

Because the decision of the Court of Appeals rendered herein has become "the law of the case" and precludes defendants prevailing upon any of the allegations contained in said answer.

Respectfully submitted,

MURPHY, WHEBER, KEITH & GOSWOLDS
Attorneys for Plaintiff

Robert Q. Keith
Gary Christopher

1400 San Jacinto Building
Beaumont, Texas

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

APR 28 1971

BEAUMONT DIVISION

JAMES R. COONEY, CLERK

BY DEPUTY MARGARET DRIVER

E. I. duPONT deNEMOURS &
COMPANY, INC.

vs.

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

CIVIL ACTION NO. 6258

MOTION TO STRIKE ANSWER

COMES NOW Plaintiff and moves and prays that the
Court strike the answer of defendants filed herein on April
27, 1971 for the following reasons:

I.

Same comes more than two years after plaintiff's
petition was filed herein and more than seven months after
defendants' dilatory pleas had been overrules by final order
of the Court of Appeals and the Supreme Court of the United
States and thus defendants stand in default of the allegations
in plaintiff's petition and lack standing to file answer at
this late date.

II.

Because the decision of the Court of Appeals ren-
dered herein has become "the law of the case" and precludes
defendants prevailing upon any of the allegations contained
in said answer.

Respectfully submitted,

MEHAFFY, WEBER, KEITH & GONSOULIN
Attorneys for Plaintiff

By

1400 San Jacinto Building
Beaumont, Texas

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE EASTERN DISTRICT OF TEXAS

FILED

U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

APR 29 1971

JAMES R. COONEY, CLERK

E. I. duPONT deNEMOURS &
COMPANY, INC.

§

DEPUTY MARGARET DRIVER

VS.

§

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

§

MOTION

COMES NOW the defendants by and through their counsel, David J. Kreager, and respectfully move the Court for an order placing the above entitled case upon the trial docket for cases to be tried by jury. Defendants would show that the jury demand heretofore filed was timely presented, but if such demand be denied as a matter of right, defendants would show the Court and move the Court to nonetheless place the case on the jury docket pursuant to Rule 39(b), Federal Rules of Civil Procedure. In support of said motion, the affidavit of counsel is attached hereto as Exhibit A.

Respectfully submitted,

ORGAIN, BELL & TUCKER
Beaumont Savings Building
Beaumont, Texas

By

David J. Kreager

ATTORNEYS FOR DEFENDANTS

The foregoing motion was served by mailing copies thereof in the United States mail on April 28, 1971, to plaintiff's attorney of record, Mr. Robert Q. Keith, San Jacinto Building, Beaumont, Texas, 77701.

Attorney for Defendants

"EXHIBIT A "

AFFIDAVIT

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

I, David J. Kreager, being first duly sworn, depose and say:

1.

I am the attorney of record for the defendants in the above entitled and numbered cause, and am authorized in my employment to make this affidavit, and do so in the capacity so stated.

2.

This suit was filed on March 28, 1969, and depositions taken with the Court's approval before answer was due. The Court upon motion entered an order compelling answer by the defendants to certain questions, and entered a stay order pending appeal of the order compelling answers as well as certain other orders entered by the Court. on this day of April, 1971.

3.

Said orders were appealed first to the Court of Appeals, Fifth Circuit, and then by petition for writ of certiorari to the Supreme Court of the United States. Defendants then applied for rehearing of order overruling petition for certiorari. Upon the same being denied, demand for a jury was filed herein on March 22, 1971.

4.

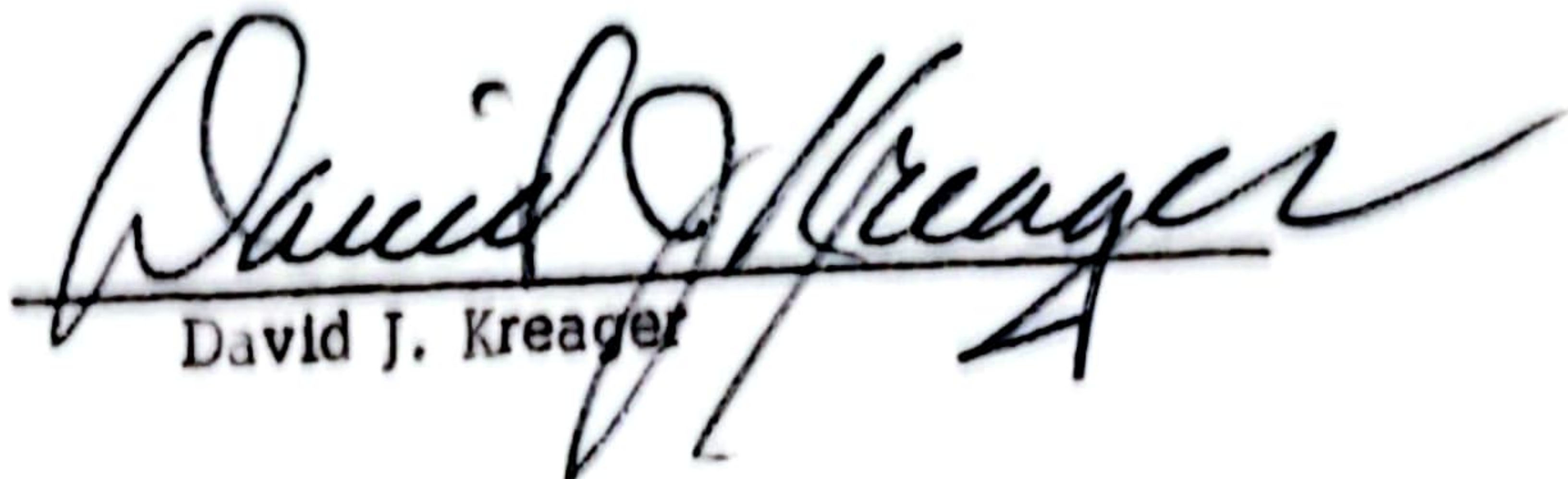
Prior to the final action of the Supreme Court, this matter had been treated by the Court and parties as being stayed. No action was taken during that time regarding the merits of the claim. Jury demand herein was filed subsequent to denial of the application for rehearing, and prior to the taking of additional depositions and prior to any pre-trial conference. Defendants filed their answer April 27 which was the first occasion that issue was joined and the last pleading directed to such issues pursuant to Rule 38.

5.


Any delay of counsel in filing jury demand was occasioned by the belief that the case was not in a position to be heard on the merits until all appellate steps had been completed, and the demand was seasonably made prior to any action taken by the Court or the parties on the merits of this case.

6.

Defendants have a right to trial by jury in this matter under the Constitution and Statutes of the United States, and plaintiff will not be prejudiced in any manner by a trial by jury in this case.


David J. Kreager

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority,
on this 28th day of April, 1971.


Notary Public in and for
Jefferson County, Texas

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE EASTERN DISTRICT OF TEXAS

FILED

BEAUMONT DIVISION

M JUN 5 1969

James R. Cooney, Clerk

By

Mildred C. Kerst

DEPUTY

E. I. duPONT deNEMOURS &
COMPANY, INC.

§

VS.

§

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER AND
GARY CHRISTOPHER

§

224

ORDER

BE IT REMEMBERED that on this date in the above case came on to be heard Defendants' Motion to Dismiss for lack of jurisdiction and Motion to Dismiss for failure to state a claim upon which relief can be granted; and Motion for Summary Judgment and Plaintiff's Motion to require answer to certain questions relating to the identity of the person, firm, or corporation who employed Defendants. Having considered all of said Motions, together with affidavits and depositions on file herein, it is ORDERED as follows:

1. Defendants' Motion to Dismiss for lack of jurisdiction is overruled;
2. Defendants' Motion to Dismiss for failure to state a claim upon which relief can be granted is overruled;
3. Defendants' Motion for Summary Judgment is overruled;
4. Plaintiff's Motion to compel answer to questions on depositions relating to the identity and location²²⁵ of the firm, person or corporation who employed Defendants to take photographs of Plaintiff's Methanol Plant at its Beaumont works and to whom he delivered said photographs is sustained;
5. Having made such rulings, and having considered the motion for Interlocutory appeal filed by Defendants, it is also ORDERED that the above orders of this Court involve a controlling

question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order will materially advance the ultimate disposition of the litigation here involved.

A prompt decision by the Appellate Court at this stage would serve the cause of justice by accelerating the ultimate termination of this litigation by settlement or otherwise.

Therefore, Defendants are GRANTED leave to file application for appeal to the Court of Appeals, and proceedings in this Court are stayed until termination thereof.

SIGNED AND ENTERED this the 5th day of June, 1969.


JUDGE PRESIDING

Division BEAUMONT Civil Docket No. 6258
E.I. duPONT deNEMOURS & COMPANY, INC., Plaintiff,
ROLFE CHRISTOPHER and GARY CHRISTOPHER, Defendant.

Attorneys:

for Plaintiff: Robt. Q. Keith, MEHAFFY, WEBER, KEITH & GONSOULIN,
1400 San Jacinto Building, Beaumont, Texas 77701
Of Counsel: William Kirk, Legal Dept., E.I. duPont deNemours
& Co., Inc., Wilmington, Delaware
 for Defendant: David Kreager, Beaumont Savings Bldg., Beaumont, Tex.
77701

Filed March 28, 19 69 Object of suit: For damages sustained as
result of illegal photographing of certain installations; for
injunction against distributing said photographs or negative, and
mandatory injunction regarding delivery of negatives and prints
to plaintiff, etc. Title 28, USC 1332.

PROCEEDINGS:

3-28-69: Filed Plaintiff's Original Petition and issued Summons.
Sent to U. S. Marshal, Tyler, Texas, for service.

4-9-69: Filed Motion for Leave to take oral depositions of
defendants within less than 20 days after commence-
ment of this action.

4-9-69: ORDER, signed by Judge Fisher and filed, grants leave
to plaintiff to take oral depositions of defendant
on April 14, 1969, and to issue such notices as
required.

4-10-69: Filed NOTICE to Take Depositions. (Issued Deposition
Subpoenas to defendants.)

4-11-69: Filed Defendants' Motion to Dismiss for Lack of
Jurisdiction.

4-11-69: Filed Motion to Postpone Taking of Deposition of
Defendants.

4-11-69: ORDER, signed by Judge Fisher and filed, sets hearing
Monday, April 14, 1969, at 10:00 A.M., to consider
Defendant's Motion to Dismiss for Lack of Jurisdic-
tion and Motion to Postpone Taking of Deposition of
Defendants in the above action. Further orders that
depositions of defendants be postponed, pending this
hearing. (Mr. Keith notified by phone. He has copy
of Order.)

4-14-69

Leaving held in Chambers,
Counsel to stipulate in
Regard to Answers.

(CONTINUED ON REVERSE)

- 4-17-69 Approved RESTRAINING ORDER signed by Judge Fisher and filed enjoining Defendants from taking any further photographs of Dupont's Beaumont Works without consent of Plaintiff; that Defendants are restrained from circulating or publishing said photographs; and that Defendants shall serve upon persons who engaged them to take photographs a copy of this ORDER of RESTRAINING, and make return to this Court, under oath, that each person has been served and upon counsel for Plaintiff.
- 4-17-69 Notice mailed to counsel
- 5-2-69 Filed Plaintiff's Motion to Compel Answer.
- 5-3-69 Letter from Attorney Robert Q. Keith requests oral hearing during week of May 12, on above Motion to Compel Answer.
- 5-6-69 *Ltr to Counsel by Judges Secretary
Setting Hearing for May 16, 1969, 10:00 A.M.*
- 5-14-69 Filed DEPOSITION of ROLFE CHRISTOPHER.
- 5-14-69 Filed DEPOSITION of GARY WESLEY CHRISTOPHER.
- 5-14-69 Filed DEPOSITION of CLIFTON WAYNE GREGORY.
- 5-16-69 Hearing Reset to May 29, 1969, 10:00 A.M.
- 5-26-69 Filed Defendants' MOTION for SUMMARY JUDGMENT.
- 6-5-69 Filed Plaintiff's Controverting Affidavit signed by Frank Maderick, Technical Superintendent of Dupont Plant, in opposition to Defendants' Motion for Summary Judgment
- 6-5-69 Filed Defendants' MOTION FOR INTERLOCUTORY APPEAL
- 6-5-69 ORDER signed by Judge Fisher and filed setting out as follows:
(1) OVERRULING Defendants' Motion to Dismiss for Lack of Jurisdiction;
(2) OVERRULING Defendants' Motion to Dismiss for failure to state claim which relief can be granted;
(3) OVERRULING Defendants' Motion for Summary Judgment;
(4) SUSTAINING Plaintiff's Motion to compel answer to questions on depositions relating to identity & location of firm or person who employed Defendants to take photographs; AND
(5) GRANTING Defendants' Motion for leave to file Application for Appeal to Court of Appeals and proceedings in this Court stayed until termination of Appeal.
- 6-5-69 MEMORANDUM signed by Judge Fisher and filed. Certified copies furnished attorneys of record.
- 7-2-69 Filed REPLY of Defendant-Appellant to Plaintiff's Answer to Petition for Interlocutory Appeal ~~(1 copy only recd)~~ *(Sent to Judge)*
- 8-6-69 Filed Certified Copy of Order received from U. S. Court of Appeals, Fifth Circuit, Granting Defendants, Rolfe Christopher, et al, Leave to Appeal from Interlocutory Order entered June 5, 1969. Copy mailed to counsel
- 8-8-69 Filed Appellants' Cost Bond on Appeal in sum of \$250.00
- 8-7-69 Filed Letter from Appellants stating that entire record be transmitted to U.S. Court of Appeals, Fifth Circuit, as record on appeal
- 8-14-69 Filed Application for Leave to Take Interlocutory Appeal by Defendants=Appellants to U.S. Court of Appeals, Fifth Circuit

IN THE UNITED STATES DISTRICT COURT

FILED

CIVIL NO. 6258 - CONTINUED

Division BEAUMONT Civil Docket No. 6258
E. I. duPONT deNEMOURS & COMPANY, INC., Plaintiff,
ROLFE CHRISTOPHER and GARY CHRISTOPHER, Defendant.

Attorneys:

for Plaintiff: Robert. Q. Keith, 1400 San Jacinto Bldg., Beaumont, Texas

for Defendant: David Kreager, Beaumont Savings Bldg., Beaumont, Texas

Filed _____, 19____ Object of suit: _____

PROCEEDINGS:

- 8-22-69 Complete original record in case mailed to U. S. Court of Appeals, Fifth Circuit, New Orleans, La.
- 7-21-70 Judge Fisher received copy of OPINION from Fifth Circuit AFFIRMING Decision of Trial Court & remanded for proceedings on merits by Court.
- 9-8-70 Filed OPINION of U. S. Court of Appeals, Fifth Circuit
- 9-8-70 Filed Certified Copy of JUDGMENT issued as MANDATE September 4, 1970, by U.S. Court of Appeals, Fifth Circuit, AFFIRMING Judgment of District Court and cause REMANDED to District Court for Proceedings on the merits in accordance with Opinion of Fifth Circuit; further Order that Defendants-Appellants pay to Plaintiff-Appellee, costs on appeal to be taxed by Clerk of Appellate Court.
- 9-8-70 Certified copies of Judgment by Fifth Circuit mailed all counsel
- 9-8-70 Record on Appeal to be returned later.
- 9-10-70 Record on Appeal received from U.S. Court of Appeals, Fifth Circuit.
- 9-23-70 Filed Motion to Vacate Order Staying Further Proceedings Until Termination of Interlocutory Appeal.
- 9-24-70 ORDER signed by Judge Fisher and filed, vacating the Order entered June 5, 1969, staying further proceedings pending termination of the defendants' interlocutory appeal. Attorneys notified.
- 9-29-70: Filed MOTION of Defendants to Reinstate Court's Order to Stay.
- 9-29-70: Filed REPLY to Motion of Defendant Seeking to Avoid Mandate of Court of Appeals.
- 10-1-70 Filed NOTICE of Intention to Take Deposition of Rolfe Christopher and Gary Christopher on October 9, 1970, in offices of their attorneys.
- 10-1-70 Filed APPLICATION for Subpoena to be issued upon Rolfe Christopher. (Issued Subpoena)
- 10-1-70 Filed APPLICATION for Subpoena to be issued upon Gary Christopher. (Issued Subpoena)

10-7-70 ORDER signed by Judge Fisher and filed, reinstating the Order entered June 5, 1969, staying further proceedings pending termination of the defendants' interlocutory appeal. Attorneys notified. *(Application for writ of Certiorari being made to Supreme Court)*

2-9-71 Filed DEPOSITION of ROLFE CHRISTOPHER

2-22-71 Filed Plaintiff's Motion to Vacate Order Staying Proceedings, and to Allow Cause to Proceed.

2-22-71 Filed Plaintiff's Notice of Intention to Take Depositions.

2-24-71 Filed ORDER, signed by Judge Fisher, VACATING Order of this Court entered June 5, 1969, and all subsequent Orders staying further proceedings herein pending termination of Defendants' interlocutory appeal. Attorneys furnished certified copies of Order.

3-12-71 SET FOR PRE TRIAL CONFERENCE ON APRIL 19, 1971

3-22-71 Filed NOTICE of Intention to Take Deposition of E. H. Peters and Mrs. Jim Saxon on March 25, 1971.

3-22-71 Filed Defendant's JURY DEMAND.

4-19-71 PRE TRIAL CONFERENCE HELD. Counsel given 10 days to Amend Pleadings. Trial Date June 7, 1971. *(Presume non-jury since Seton non-jury week)*

4-27-71 Filed ANSWER of Defendants.

4-28-71 Filed Motion to Strike Answer of Defendants.

4-29-71 Filed Defendant's Motion for Jury Trial.

5-5-71 Filed Defendants' Reply to Plaintiff's Motion to Strike Answer.

5-13-71 ORDER, signed by Judge Fisher and filed, orders that this case be placed on the jury docket of this court for trial; for jury selection May 24, 1971. Attorneys notified by copies of Order.

5-13-71 ORDER, signed by Judge Fisher and filed, denies Plaintiff's motion to strike answer of defendants and for declaration that defendants stand in default. Attorneys notified by copies of Order.

5-24-71 CASE ANNOUNCED SETTLED IN OPEN COURT.

7-14-71 Filed Joint MOTION to Dismiss.

7-16-71 ORDER, signed by Judge Fisher and filed, grants joint motion to dismiss this cause, dismissing the cause without prejudice with each party to bear all costs it has incurred to date. Attorneys notified by certified copies of Order.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JUL 14 1971

JAMES R. COONEY, CLERK

BY DEPUTY Beatrice H. Bryan

E. I. duPONT deNEMOURS &
COMPANY, INC.

vs.

ROLFE CHRISTOPHER AND
GARY CHRISTOPHER

I
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CIVIL ACTION NO. 6258

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff and defendants herein jointly move and
pray that the Court dismiss this cause, without prejudice,
and with each party bearing its own costs incurred to date.

Respectfully submitted,

MEHAFFY, WEBER, KEITH & GONSOULIN
Attorneys for Plaintiff

By Robert Q. Keith
ROBERT Q. KEITH

ORGAIN, BELL & TUCKER
Attorneys for Defendants

By David J. Kreager
DAVID J. KREAGER

O R D E R

The joint motion of plaintiff and defendants to dis-
miss this cause is hereby GRANTED and this cause is in all
things dismissed, without prejudice. Each party hereto shall
bear all costs of Court it has incurred to date.

Done this 16th day of July, 1971.

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JUL 16 1971

JAMES R. COONEY, CLERK

BY DEPUTY Margaret Trice

Deed D. J. Kreager
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAY 13 1971

BEAUMONT DIVISION

JAMES R. COONEY, CLERK

BY
DEPUTY, *Margaret Driver*

E. I. duPONT deNEMOURS & §
COMPANY, INC.

VS. § CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER and §
GARY CHRISTOPHER

ORDER

On this day came on for hearing the motion of the defendants for an order to have the above entitled and numbered cause entered on the jury docket of this Court. The Court having considered said motion and the affidavit of counsel attached thereto, and the argument of the parties thereon, the Court is of the opinion and finds that good cause exists for the failure to file demand for jury trial prior to March 22, 1971, and that defendants have a right to a jury trial herein, and that granting of same has not and will not prejudice the plaintiff.

It is, therefore, ORDERED that this case be placed on the jury docket of this Court for trial, *for jury selection 5/24/71*
SIGNED and ENTERED this 13th day of ^{May} April, 1971.

[Signature]
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAY 13 1971

E. I. duPONT deNEMOURS &
COMPANY, INC.

§

JAMES R. COONEY, CLERK
BY
DEPUTY *Margaret Driver*

vs.

§

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER AND
GARY CHRISTOPHER

§

ORDER

Plaintiff's motion to strike the answer of defendants and for
declaration that defendants stand in default be and the same is in
all things denied.

RENDERED and SIGNED this 13th day of May, 1971.

Dee Driver
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAY 5 1971

JAMES R. COONEY, CLERK

BY
DEPUTY *Margaret Driver*

E. I. duPONT deNEMOURS & CO., §
INC.

VS. § CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER AND
GARY CHRISTOPHER §

DEFENDANTS' REPLY TO
PLAINTIFF'S MOTION TO STRIKE ANSWER

COMES NOW defendants in the above entitled and numbered cause and in answer to plaintiff's motion to strike answer would show the Court the following:

1.

Prior to filing formal answer herein, as provided in Rule 12, defendants appeared in person and by and through their counsel. Defendants filed certain motions and vigorously pursued attacks upon the jurisdiction, to strike and summary judgment. This Court entered an order staying all proceedings in this Court. The subsequent appeals on interlocutory matter to the Fifth Circuit and the United States Supreme Court operated to extend the time for filing of formal answer herein. The Supreme Court's order overruling motion for rehearing on application for writ of certiorari was not rendered until March 8, 1971. Request for a jury trial and answer was duly filed thereafter.

2.

Subsequent to the final ruling of the Supreme Court, plaintiff has instituted discovery proceedings, taken depositions, and participated in pre-trial conferences in this Court without raising any question regarding the absence of a formal answer herein by defendants. Defendants

have likewise participated in such proceedings subsequent to the final order of the Supreme Court in this matter, and despite the absence of a formal answer, have vigorously and at all times otherwise defended this matter, and are not in default.

3.

Plaintiff has not shown any prejudice resulting from the failure of the defendants to file formal answer herein, and has by its conduct waived any possible defect therein, and has consented to same, and is estopped to assert the motion to strike.

4.

Defendants have vigorously defended plaintiff's action at all stages of this proceeding, and were not in default for failure to plead or otherwise defend within the meaning of Rule 55, Federal Rules of Civil Procedure, at the time that formal answer was filed on April 27, 1971. In any event, said answer was filed and served on plaintiff prior to any motion, application or other action on the part of plaintiff seeking relief for failure of defendants to file formal answer herein, and plaintiff's motion now comes at a time when defendants have answered and plaintiff has no right to assert same.

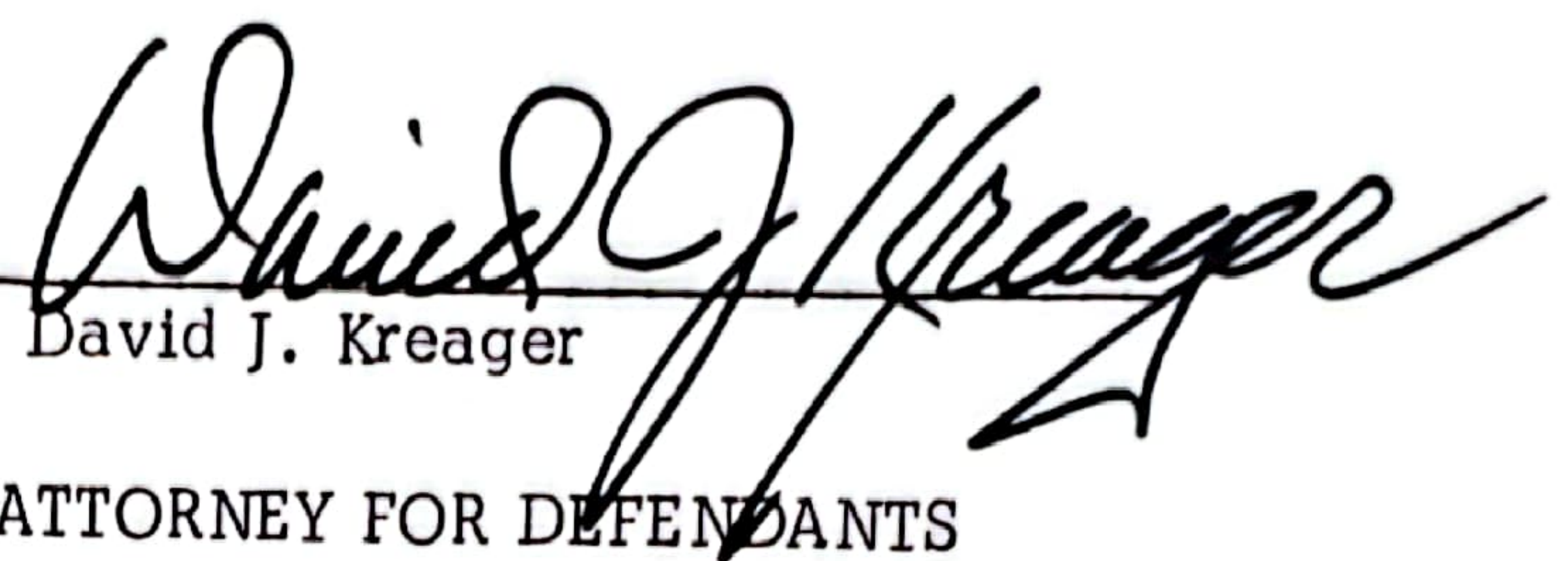
5.

The decision of the Fifth Circuit in this matter went only to certain preliminary and interlocutory motions filed herein as to whether or not plaintiff had stated a cause of action. Said motions did not concern the merits of this case or defendants' lawful defenses thereto, nor did such motions consider any facts or defenses which will be involved in a trial of this case on its merits.

WHEREFORE, premises considered, defendants move and pray that plaintiff's motion to strike answer herein be in all things denied. In the alternative, defendants move and pray that if plaintiff's motion be granted, that defendants be granted leave to file answer herein under the provisions of Rule 6, Federal Rules of Civil Procedure.

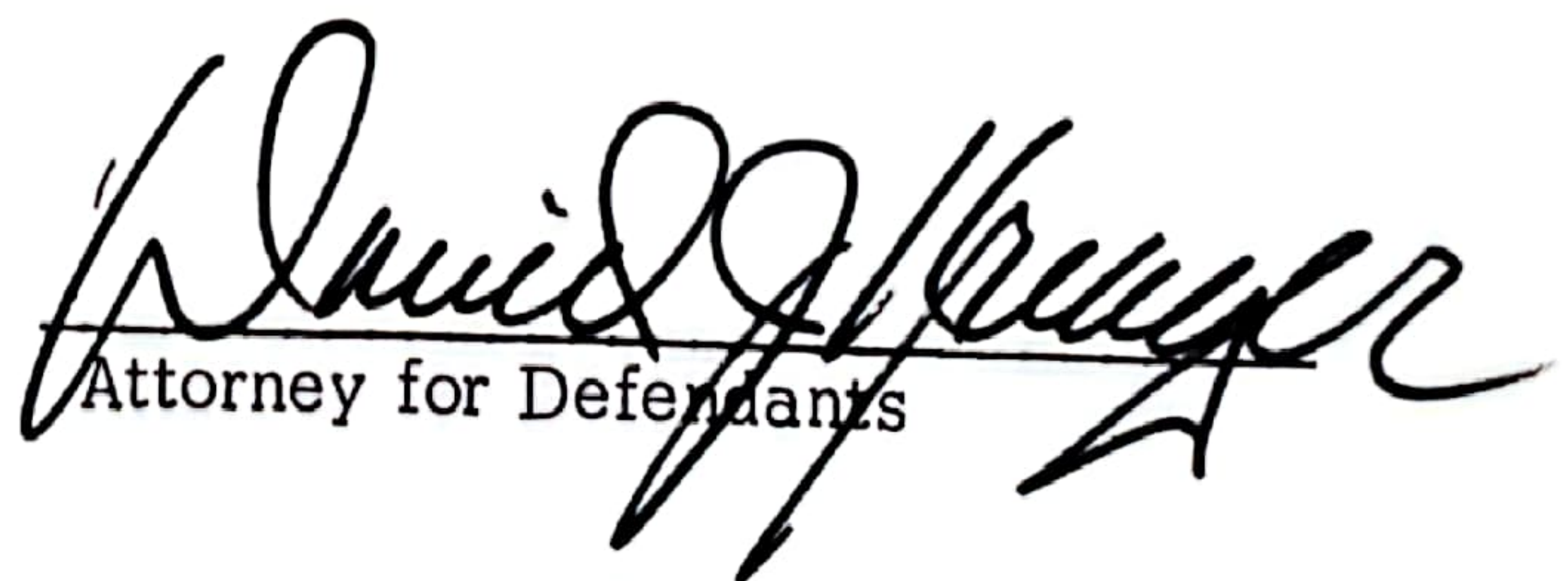
Respectfully submitted,

ORGAIN, BELL & TUCKER
Beaumont Savings Building
Beaumont, Texas

By 
David J. Kreager
ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

The foregoing reply to plaintiff's motion to strike answer was served by mailing copy thereof in the United States mail on May 5, 1971, to plaintiff's attorney of record, Mr. Robert Q. Keith, San Jacinto Building, Beaumont, Texas 77701.


Attorney for Defendants

MEMORANDUM

Rule 55 provides default may be entered where a party fails to plead or otherwise defend. We have done both. Our answer was on file prior to plaintiff's motion for default. For two years we have "otherwise defended" through the Fifth Circuit and the United States Supreme Court.

Wallace vs. DeWerd, 47 F.R.D. 4 (U.S.D.C. V.I. 1969.)

Suit was filed in July, 1968, no answer was filed until February 6, 1969. After answer had been filed, the plaintiff moved for judgment by default, asserting that the answer had not been timely filed. The defendant filed affidavit that the complaint had not been brought to the attention of the attorney, and that he did not know of its existence within the time required for answer, and that as soon as it had been discovered, answer was filed. The court denied the motion for default judgment, holding that the matter of granting default was not a matter of right of the plaintiff, but was addressed to the sound discretion of the trial court. The court further held that default judgments were not favored in the law, especially where they would work an injustice in the rights of the parties. The court pointed out that the defendant had now appeared and answered in the case, and that the plaintiff had not been prejudiced in any manner. The court went on to hold that in such matters where the court was asked to enter a default judgment, the neglect or oversight on the part of counsel in failing to file answer did not even have to be shown to be "excusable".

See also U. S. vs. Scranton, 257 F. Supp. 557 (U.S.D.C. P.A. 1966) where the complaint was served on March 10, 1966, and answer was filed on April 28, 1966. Motion for judgment by the plaintiff was filed on April 29, 1966, after answer had been filed. The court in that stated that motion for default was not as a matter of right but was addressed

to the sound discretion of the trial court, and pointed out that the failure to plead was largely technical in nature and that the plaintiff had shown no prejudice.

See also Albert Levine Assoc., Inc. vs. Kershner, 45 F.R.D. 450 (U.S.D.C. N.Y. 1968). In that case answer was filed one week after answer date and the plaintiff then filed motion for default for failure to file a timely answer. The motion was denied by the trial court principally on the grounds that no prejudice had been shown by the plaintiff.

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

APR 27 1971

JAMES R. COONEY, CLERK

BY
DEPUTY

Margaret Smith

E. I. duPONT deNEMOURS & §
COMPANY, INC.

VS. § CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER and
GARY CHRISTOPHER §

ANSWER OF DEFENDANTS

COME NOW Rolfe Christopher and Gary Christopher, defendants
in the above cause, and answer plaintiff's complaint as follows:

1. Defendants admit Paragraph I.
2. Defendants deny Paragraph II.
3. Defendants admit Paragraph III.
4. Defendants can neither admit nor deny Paragraph IV because
they are without sufficient knowledge or information to answer the same.
5. Defendants admit photographing portions of duPont but other-
wise deny Paragraph V.
6. Defendants deny Paragraph VI.
7. Defendants have delivered the photographs to duPont's attor-
ney and have disclosed the name of the person who hired them; said
allegations in Paragraph VII are denied.
8. Defendants deny Paragraph VIII.
9. Defendants deny plaintiff is entitled to the relief sought
herein.

AFFIRMATIVE DEFENSES

1. Defendants are commercial photographers practicing their
profession in Jefferson County, and as such have occasion to take aerial

photographs. These photographs are taken for many purposes, including accident investigation, owners who desire to display their plants, and civic endeavors. In this regard, they were hired to fly over duPont and take aerial photographs. While they admit flying over and photographing certain of plaintiff's industrial complex, they exercised only their rights to the use of normal air space open for public use, and their rights to practice their profession as photographers. That this suit is an attempt to prohibit the defendants as members of the public from use of the public air space and is an attempt to interfere with and abridge defendants' right to practice their profession as commercial photographers. That as such it is an unconstitutional violation of their rights as citizens under the Constitution of the United States of America and the Constitution of the State of Texas.

2. That to the best of defendants' knowledge the plaintiff had no "trade secrets" or "know-how" concerned in, photographed by, or observable in said photographs. If the plaintiff claims some unusual right or secret which would prohibit the use of aerial photography, plaintiff failed to bring the same to the knowledge of the defendants, and failed to warn anyone that photographs taken from the public air space would disclose trade secrets, and in this regard the defendants were wholly innocent and uninformed as to such secret rights being claimed by plaintiff. That such failure on the part of plaintiff to bring same to the attention of anyone who would be flying over duPont bars plaintiff's action both ~~at~~ equity and in law.

3. Defendants do not believe that plaintiff has any such trade secret or "know-how" which is claimable by plaintiff. However, should plaintiff have the same, plaintiff failed to take any reasonable steps or

protective measures, to prevent the same from being observed from the air, and such failure bars plaintiff's action in law and equity.

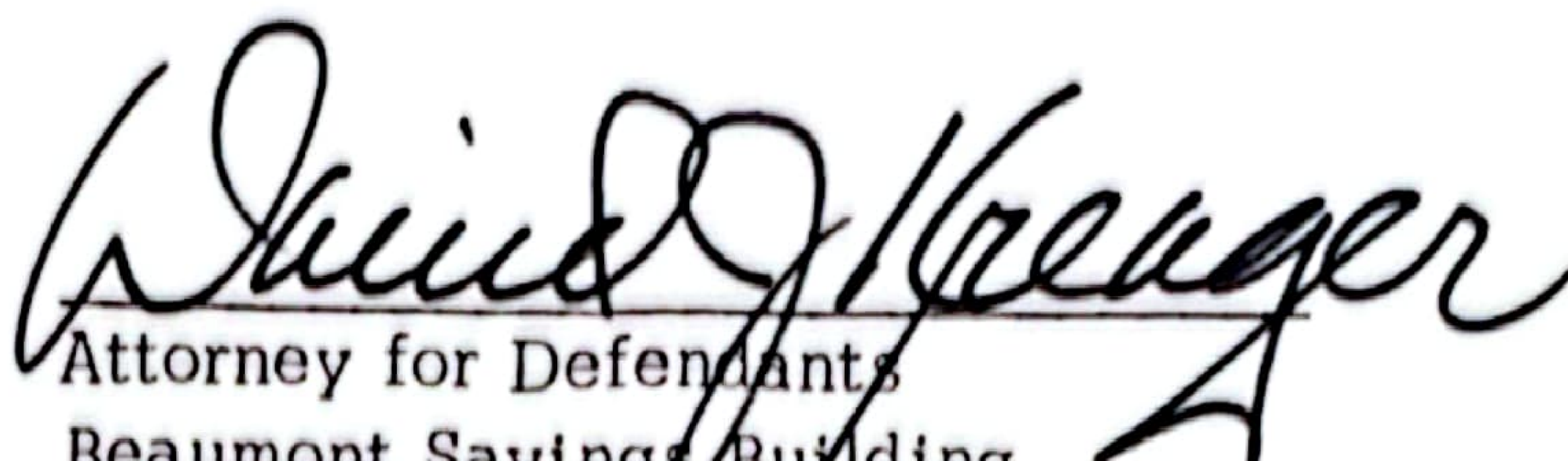
4. If plaintiff claims that it does have a trade secret, plaintiff failed to exercise its rights under the laws of the United States and State of Texas designed for the protection of trade secrets and particularly the patent laws. Such laws are designed to afford notice to all parties that plaintiff is claiming some unusual right or secret, and plaintiff's failure in this regard bars his action at law and in equity.

5. Numerous photographs of an aerial nature have been made over Jefferson County, including plaintiff's facilities. To bar the defendants from photographing, when such photographs of necessity at times include portions of plaintiff's premises, is an illegal restraint of trade. In this regard, plaintiff's failure to take reasonable steps to protect any claimed unusual right or secret constitutes a waiver or estoppel of any legal right to prohibit such photography.

6. Defendants violated no law or rights in that they made no attempt to discover any unusual right or secret for the purpose of advancing anyone's business interests. Furthermore, they did not use or disclose any so-called trade secret. They have not obtained any trade secret and have only taken certain photographs. Said photographs were returned to plaintiff as well as the name of a third party who hired defendants to take said photographs, and said action is moot or functus officio.


WHEREFORE, premises considered, defendants move and pray the Court that upon trial hereof plaintiff recover none of the relief sought, that defendants go hence with their costs and for such other

and further relief as they may be justly entitled to receive, at law or in equity.


Attorney for Defendants
Beaumont Savings Building
Beaumont, Texas 77701

PROOF OF SERVICE

I certify that a true copy of the foregoing answer was served on plaintiff by delivering a copy thereof to plaintiff's attorney of record, Mr. Robert Q. Keith, San Jacinto Building, Beaumont, Texas, 77701, this the 27th day of April, 1971.


Attorney for Defendants

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

JAMES R. COONEY, CLERK

E. I. duPONT deNEMOURS
& COMPANY, INC.

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BY
DEPUTY *Margaret Travis*

VS.

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

MOTION

TO THE HONORABLE JUDGE OF SAID COURT:

Upon June 5, 1969, the Court entered its Order Overruling Defendants' Motions to Dismiss and Motion for Summary Judgment and Granting Plaintiff's Motion to compel answer to questions on depositions, allowing an interlocutory appeal and staying further proceedings in this Court until termination of the interlocutory appeal.

The United States Court of Appeals, Fifth Circuit, has now affirmed the Judgment of this Honorable Court, the mandate having issued and been filed September 8, 1970.

Petition for Writ of Certiorari to the Supreme Court of the United States was denied January 25, 1971.

It is accordingly proper that the Court's Order staying further proceedings be vacated and this cause allowed to proceed in accordance with law.

Respectfully submitted,

MEHAFFY, WEBER, KEITH & GONSOLIN
Attorneys for Plaintiff

By: *Robert Q. Keith* Of Counsel

1400 San Jacinto Building
Beaumont, Texas 77701

CERTIFICATE OF SERVICE

A copy of the foregoing has been served upon Mr. David Kreager, attorney for Defendants, upon this the 19 day of February, 1971, by first class mail, properly posted.

Robert Q. Keith
ROBERT Q. KEITH

IN

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ORGAIN, BELL & TUCKER
ATTORNEYS AT LAW
BEAUMONT SAVINGS BUILDING
BEAUMONT, TEXAS
77701

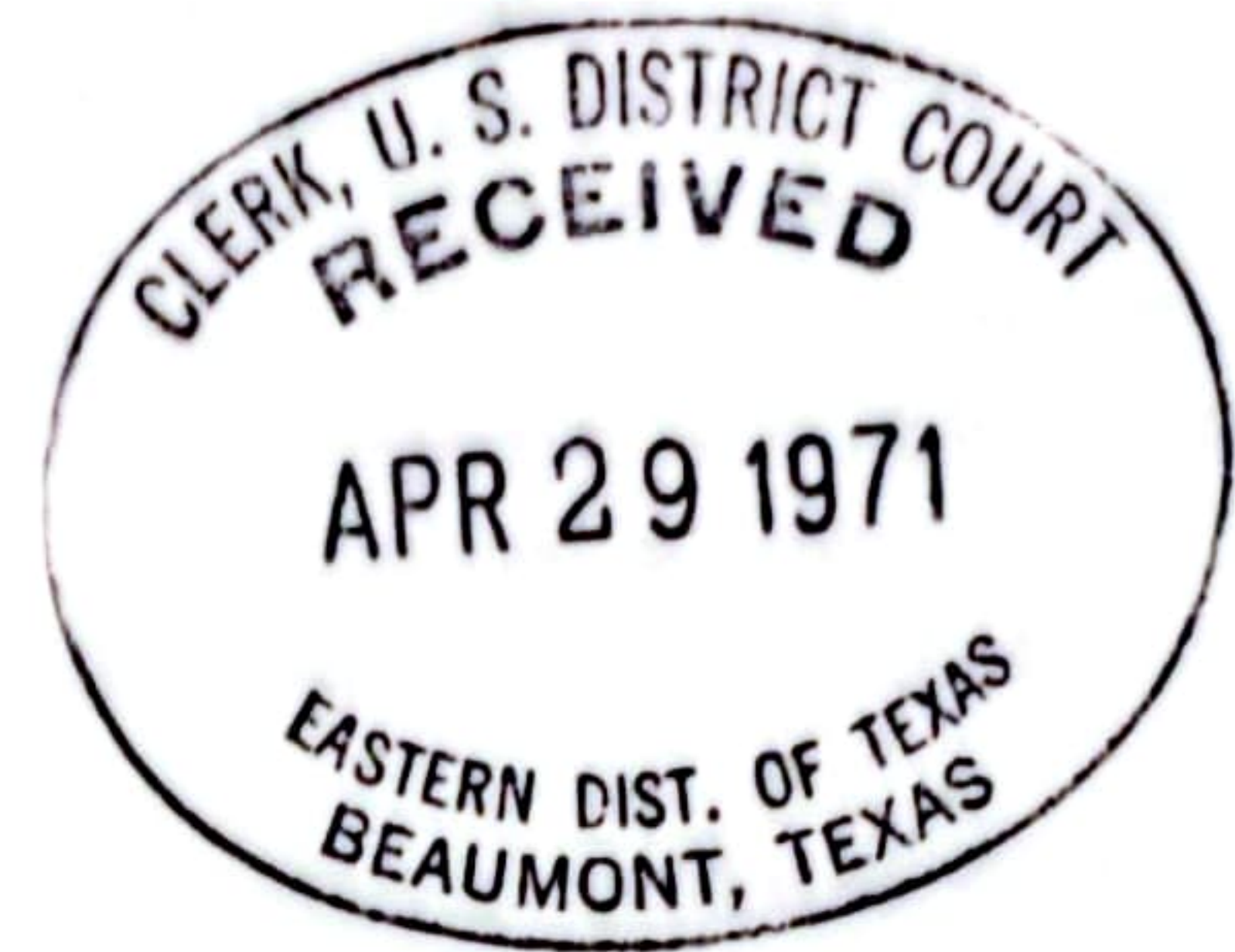
TELEPHONE 838-6412
AREA CODE 713

JOHN G. TUCKER
BENJ. D. ORGAIN
CLEVE BACHMAN
STANLEY PLETTMAN
HOWELL COBB
JAMES W. HAMBRIGHT
DAVID J. KREAGER
BENNY H. HUGHES, JR.
GILBERT I. LOW
J. HOKE PEACOCK II
LAWRENCE L. GERMER
TOM NORMAND

April 28, 1971

Re: Civil Action No. 6258 - E. I. duPont deNemours &
Company, Inc. vs. Christophers

Mr. James R. Cooney, Clerk
United States District Court
Federal Building
Beaumont, Texas



Dear Mr. Cooney:

Enclosed is motion requesting that the captioned matter be placed on the jury docket, together with order thereon, which I would thank you to bring to Judge Fisher's attention.

Very truly yours,

ORGAIN, BELL & TUCKER

David J. Kreager

A large, stylized handwritten signature in dark ink, which appears to read "David J. Kreager". The signature is written over the typed name "David J. Kreager" and extends to the right, with a long, sweeping tail.

DJK/bt

Encls.

cc: Mr. Robert Q. Keith

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

E. I. duPONT deNEMOURS &
COMPANY, INC.

VS.

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

CIVIL NO. 6258

The following motions ^{were} ~~was~~ filed on April 28 and April 29, 1971:
~~xxx~~
Plaintiff's Motion to Strike Answer of Defendants; and
Defendant's Motion for Jury Trial.

There was ~~(was not)~~ evidence received of the necessary service of motion on the adverse parties. No motion will be presented to the Judge until indication of service is received by the Clerk and the proper time has elapsed as governed by the Rules of this Court. Indication of service is usually given by a statement at the bottom of the motion, below the signature, showing the date a copy of the motion was mailed to adverse party. This statement should be signed.

All motions are to be answered within ten (10) days unless otherwise allowed by the Court or some applicable rule of the Federal Rules of Civil Procedure.

THE LOCAL RULE is to consider motions on the pleadings, without oral hearing, unless on showing good cause an oral hearing is granted. Request for oral hearing, if any, should be made when the motion, or the reply, is filed. If oral hearing is granted, the Judge will set a date for same and the interested attorneys will be notified.

THE JUDGE desires that memorandum briefs containing authorities relied on as to matters raised in the motion be filed by the respective parties before the motion is submitted.

Please note also that it is Judge Fisher's rule that all documents including forms of orders and judgments, be sent to the Clerk's Office and not direct to the Judge.

IF YOU DO NOT DESIRE TO OPPOSE THE ABOVE MOTION, PLEASE INFORM THE CLERK BY LETTER.

JAMES R. COONEY, CLERK

Mr. David J. Kreager
Orgain, Bell & Tucker
Beaumont Savings Bldg.
Beaumont, Texas

By _____
Deputy

Mr. Robert Q. Keith
Mehaffy, Weber, Keith & Gonsoulin
San Jacinto Bldg.
Beaumont, Texas 77701

MEHAFFY, WEBER, KEITH & GONSOULIN
ATTORNEYS AT LAW

SAN JACINTO BUILDING
BEAUMONT, TEXAS 77701

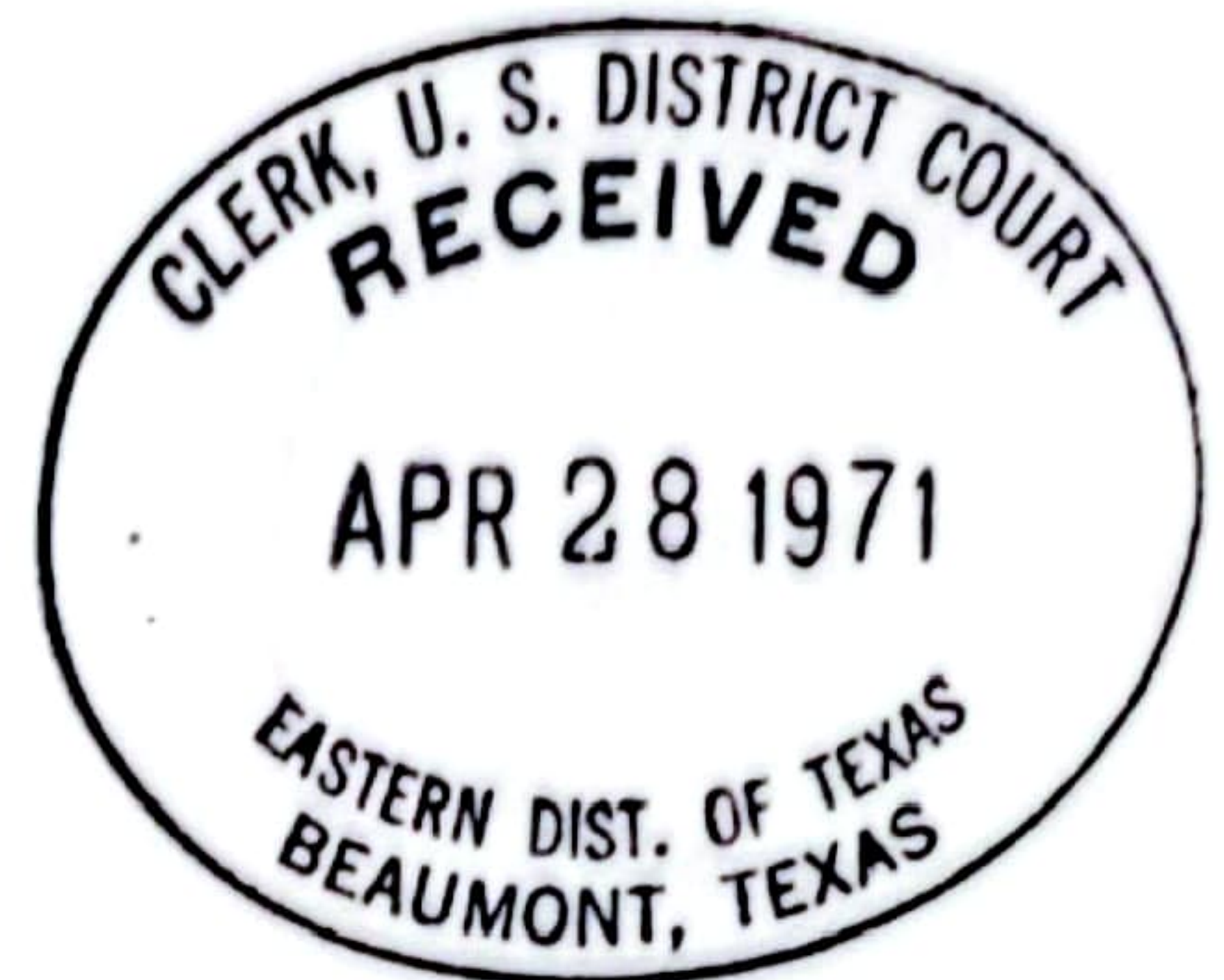
JAMES W. MEHAFFY
O. J. WEBER
ROBT. Q. KEITH
DEWEY J. GONSOULIN
BRYAN J. MCGINNIS
JOHN L. BELL, JR.
JAMES W. MEHAFFY, JR.
DANIEL V. FLATTEN

April 28, 1971

JOHN L. BELL, SR.
OF COUNSEL
(1900-1970)

Re: No. 6258 - E. I. duPont deNemours & Company, Inc.
vs. Rolfe Christopher and Gary Christopher

Mr. James R. Cooney
Clerk, United States District Court
Federal Building
Beaumont, Texas

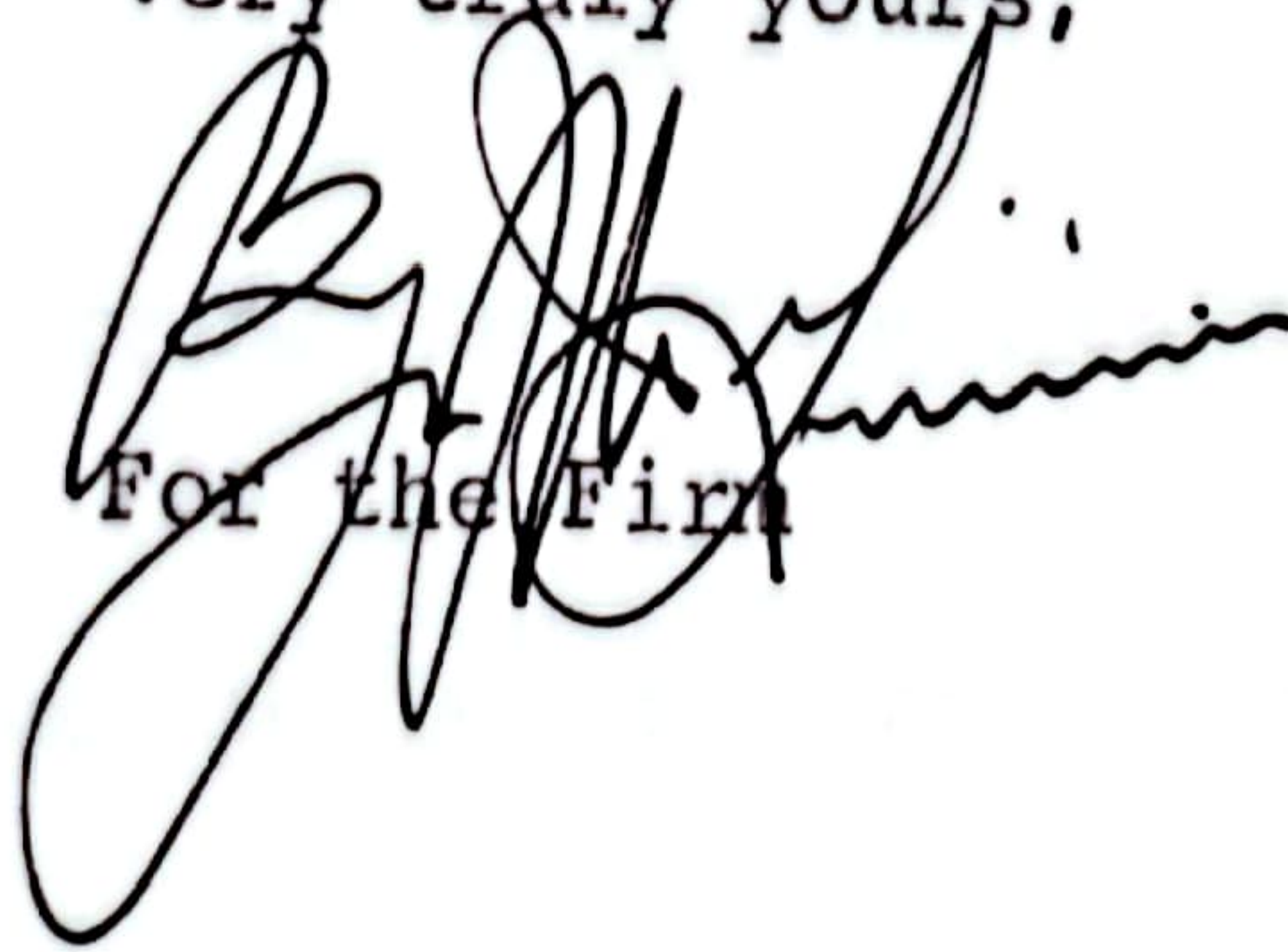


Dear Sir:

Enclosed for filing in the above-captioned matter is Motion to Strike Answer and Order, along with a post card to be returned to this office indicating the date of receipt and filing thereof.

By copy of this letter to opposing counsel I am furnishing him with a copy of these instruments.

Very truly yours,


For the Firm

RQK:ps

Enclosures

cc: Mr. David J. Kreager

JOHN G. TUCKER
BENJ. D. ORGAIN
CLEVE BACHMAN
STANLEY PLETTMAN
HOWELL COBB
JAMES W. HAMBRIGHT
DAVID J. KREAGER
BENNY H. HUGHES, JR.
GILBERT I. LOW
J. HOKE PEACOCK II
LAWRENCE L. GERMER
TOM NORMAND

ORGAIN, BELL & TUCKER
ATTORNEYS AT LAW
BEAUMONT SAVINGS BUILDING
BEAUMONT, TEXAS
77701

TELEPHONE 838-6412
AREA CODE 713

May 5, 1971

Re: Civil Action No. 6258 - E. I. duPont deNemours &
Company, Inc. vs. Rolfe Christopher

Honorable James R. Cooney, Clerk
United States District Court
Federal Building - United States Post Office
Beaumont, Texas



Dear Mr. Cooney:

Enclosed for filing in the above captioned matter is defendants' reply to plaintiff's motion to strike.

Please bring to the Court's attention the plaintiff's motion to strike answer and order, as well as this the defendants' reply to motion to strike answer. Direct the Court's attention to the fact that a memorandum of authorities is attached.

Also attached is an order denying plaintiff's motion to strike answer.

By copy of this letter to opposing counsel, I am furnishing a copy of all instruments.

Very truly yours,

ORGAIN, BELL & TUCKER

David J. Kreager

DJK/bt
Encls.

cc: Mr. Robert Q. Keith

MEHAFFY, WEBER, KEITH & GONSOULIN

ATTORNEYS AT LAW

SAN JACINTO BUILDING

BEAUMONT, TEXAS 77701

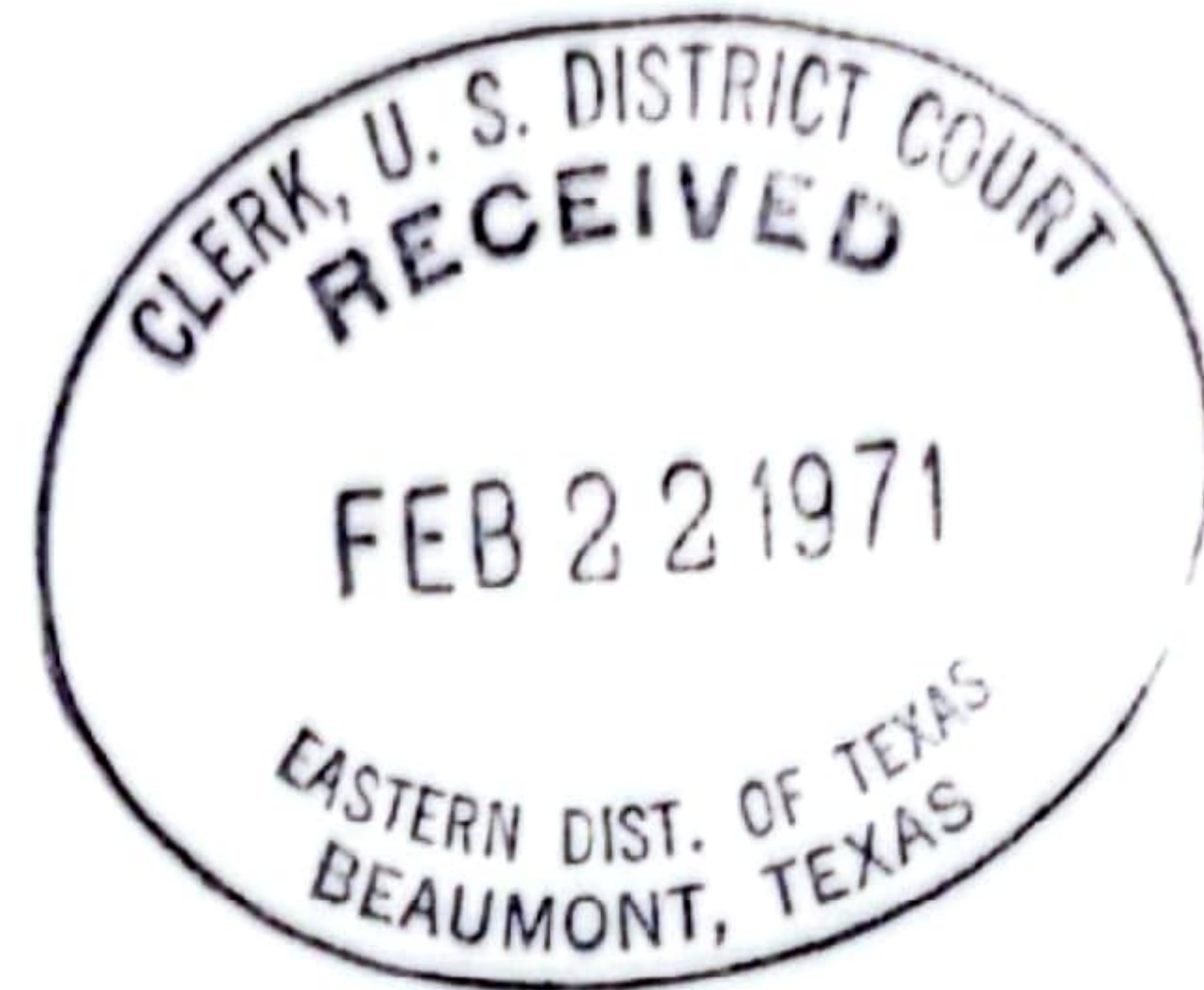
JAMES W. MEHAFFY
O. J. WEBER
ROBT. Q. KEITH
DEWEY J. GONSOULIN
BRYAN J. MCGINNIS
JOHN L. BELL, JR.
JAMES W. MEHAFFY, JR.
DANIEL V. FLATTEN

February 19, 1971

JOHN L. BELL, SR.
OF COUNSEL
(1900-1970)

Re: C. A. No. 6258 E. I. duPont deNemours & Company,
Inc. v. Rolfe Christopher and Gary Christopher

Mr. James Cooney, Clerk
United States District Court
Post Office Box 231
Beaumont, Texas



Dear Mr. Cooney:

I enclose herewith for the court's consideration and for filing our motion and order and notice of intention to take deposition.

Very truly yours,

Robt. Q. Keith

For the Firm

RQK/jw

Enclosures

cc: Mr. Dave Kreager

cc: Mr. Ed Green

P. S. Also enclosed are subpoenas. Please issue and return
to us and we will serve them.

MEHAFFY, WEBER, KEITH & GONSOULIN

ATTORNEYS AT LAW

SAN JACINTO BUILDING

BEAUMONT, TEXAS 77701

P. O. Box 231
Beaumont, Texas 77704
October 9, 1970

JOHN L. BELL SR.
OF COUNSEL
(1900-1970)

September 30, 1970

Re: Mr. David J. Kreager
Orgain, Bell & Tucker
Beaumont Savings Building
Beaumont, Texas 77701

Mr. Robert Q. Keith
Mehaffy, Weber, Keith & Gonsoulin
1400 San Jacinto Building
Beaumont, Texas 77701

Re: E. I. duPont deNemours & Company, Inc.,
vs. Rolfe Christopher and Gary
Christopher - C.A. No. 6258

Dear Sir:

Gentlemen:

Enclosed herewith for filing in the above
captioned cause is a copy of the following
Order was signed by Judge Fisher, filed and entered
in the above cause as of October 7, 1970:

Order reinstating the Order entered June 5, 1969,
staying further proceedings pending termination of the
defendants' interlocutory appeal.

Very truly yours,

JAMES R. COONEY, CLERK

RQK:fk

Enclosures

By

(Mrs.) Virginia R. Sens
Deputy Clerk

cc: Mr. David J. Kreager
Attorney for Defendants
Beaumont Savings Building
Beaumont, Texas



MEHAFFY, WEBER, KEITH & GONSOULIN
ATTORNEYS AT LAW
SAN JACINTO BUILDING
BEAUMONT, TEXAS 77701

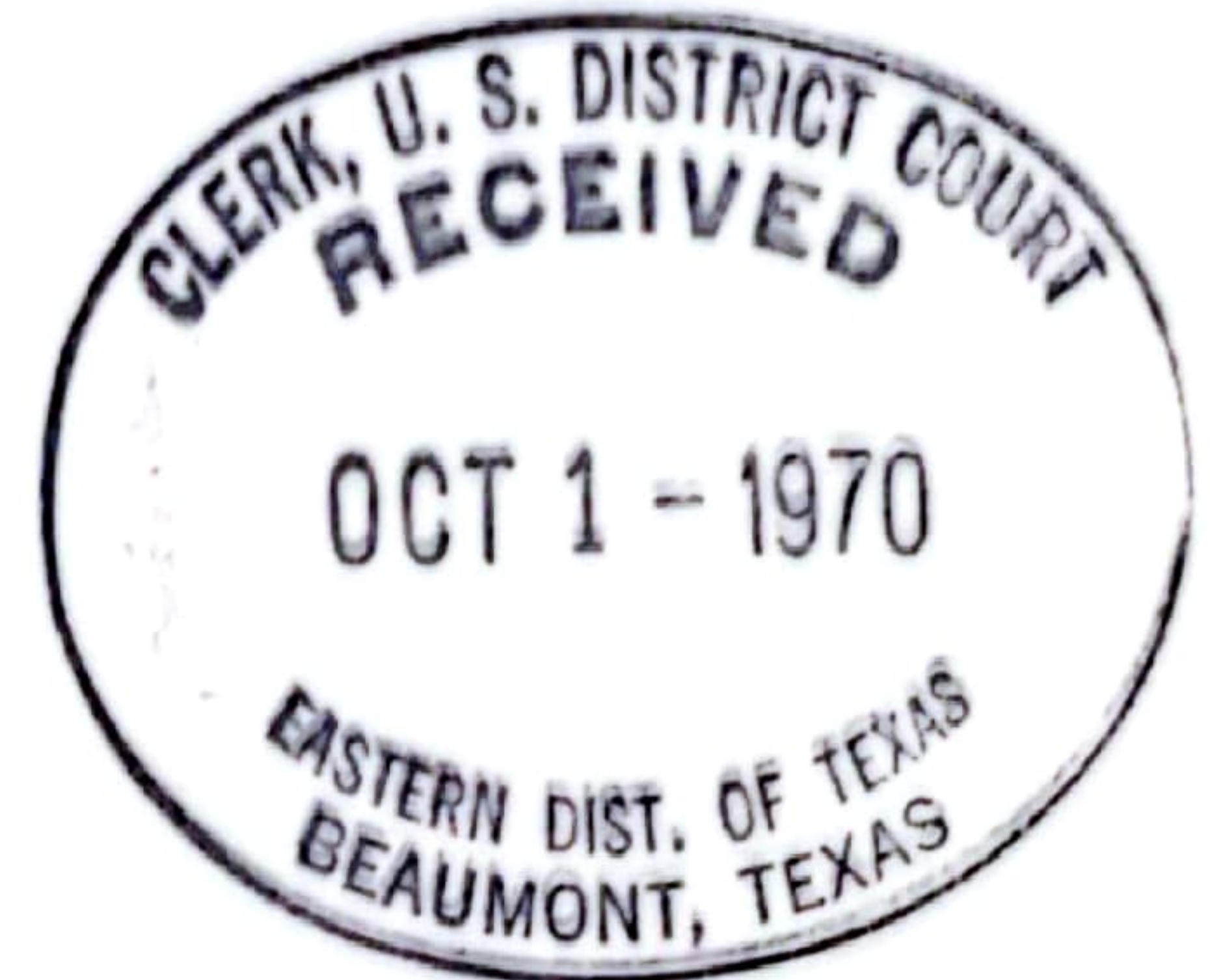
JAMES W. MEHAFFY
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ROBT Q. KEITH
DEWEY J. GONSOULIN
BRYAN J. MCGINNIS
JOHN L. BELL, JR.
JAMES W. MEHAFFY, JR.

JOHN L. BELL, SR.
OF COUNSEL
(1900-1970)

September 30, 1970

Re: E. I. duPont deNemours & Company, Inc.
vs. Rolfe Christopher and Gary Christopher;
Civil Action No. 6258

Mr. James R. Cooney, Clerk
United States District Court
Federal Building
Beaumont, Texas



Dear Sir:

Enclosed herewith for filing in the above-captioned cause is Notice of Intention To Take Deposition of Rolfe and Gary Christopher, together with Application For Subpoena for both Rolfe and Gary Christopher.

Very truly yours,

Robt Q. Keith

For the Firm

RQK: fkm
Enclosures

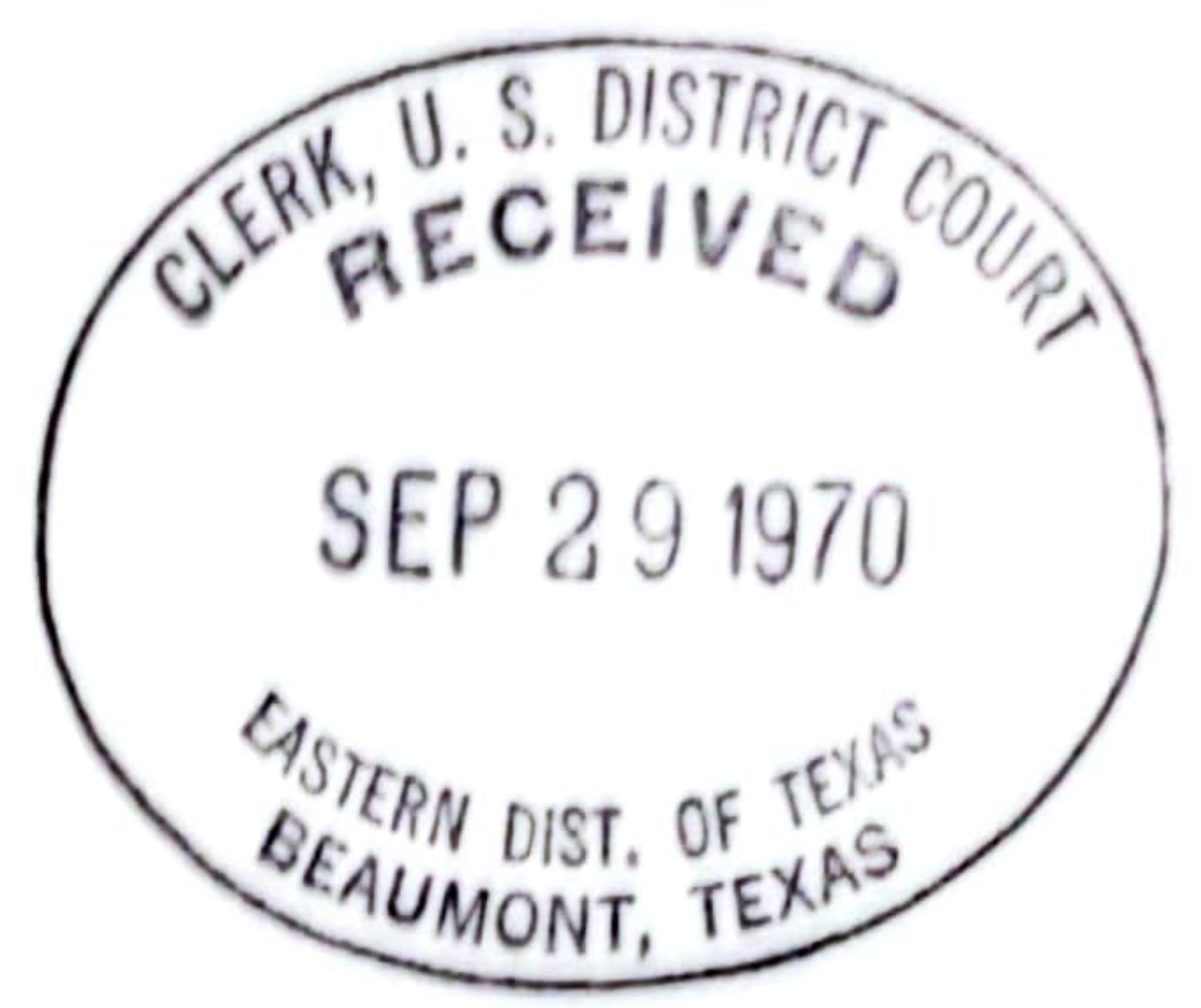
cc: Mr. David J. Kreager
Attorney for Defendants
Beaumont Savings Building
Beaumont, Texas

JOHN G. TUCKER
BENJ. D. ORGAIN
CLEVE BACHMAN
STANLEY PLETTMAN
HOWELL COBB
JAMES W. HAMBRIGHT
DAVID J. KREAGER
BENNY H. HUGHES, JR.
GILBERT I. LOW
J. HOKE PEACOCK II
LAWRENCE L. GERMER
TOM NORMAND

ORGAIN, BELL & TUCKER
ATTORNEYS AT LAW
BEAUMONT SAVINGS BUILDING
BEAUMONT, TEXAS
77701

TELEPHONE 838-6412
AREA CODE 713

September 28, 1970



Re: E. I. duPont deNemours & Company, Inc.
vs. Rolfe Christopher and Gary Christopher
Civil Action No. 6258

Mr. James R. Cooney, Clerk
United States District Court
Federal Building
Beaumont, Texas

Dear Mr. Cooney:

Please find enclosed motion to reinstate order of stay, together with proposed order thereon, which I should appreciate your bringing to the attention of the Court.

I have discussed this with Mr. Robert Q. Keith, and he requests that we have an opportunity to discuss the matter personally with the Court. The urgency of such discussion is enhanced by Mr. Keith's request to take the oral deposition of Rolfe Christopher and Gary Christopher at 9:30 A.M. October 9, 1970.

A copy has this day been furnished counsel of record by first class mail properly posted.

Very truly yours,

ORGAIN, BELL & TUCKER

David J. Kreager
David J. Kreager

DJK/bt
Encls.

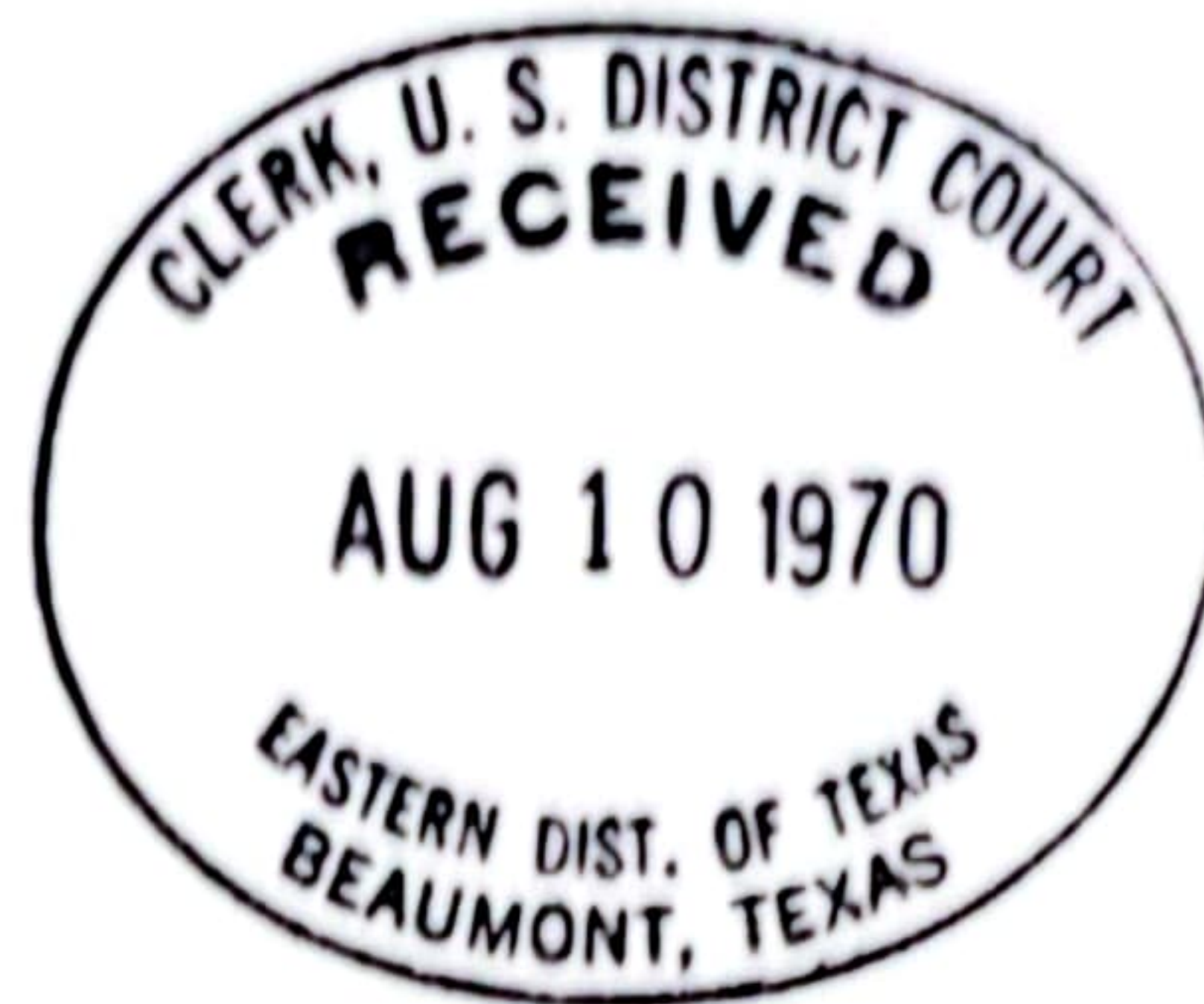
cc: Mr. Robert Q. Keith
Mehaffy, Weber, Keith & Gonsoulin
San Jacinto Building
Beaumont, Texas 77701



THE DOW CHEMICAL COMPANY

BRAZOS DIVISION
3636 RICHMOND AVENUE • P.O. BOX 22468
HOUSTON, TEXAS 77027

August 7, 1970



Clerk of the U.S. District Court
Eastern District of Texas
Beaumont, Texas

Re: E. I. du Pont de Nemours & Co. vs. Christopher,
Rolfe and Gary

Gentlemen

I should like to order copies of the following documents or instruments relative to the subject law suit:

1. Plaintiff's Original Petition and any subsequent amended petitions.
2. Defendant's Original Answer and any subsequent amended answers.
3. The Decision or Order issued by the U.S. District Court.

If there is a reproduction charge or postage due for the foregoing instruments, please advise and the proper amount will be remitted to your office.

THE DOW CHEMICAL COMPANY

M. W. Maxwell

MWM:mm

JUL 25 1969

Monsanto

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63166
Phone: (314) 694-1000

July 23, 1969

Mr. James R. Cooney, Clerk
U. S. District Court
P. O. Box 231
Beaumont, Texas 77704

RE: duPont vs. Christopher et al
Civil No. 6258

Dear Mr. Cooney:

Enclosed you will find my check in the amount of six dollars to cover the charges for the photocopies that you recently forwarded to me relating to the above-identified civil action.

In accordance with our earlier instructions, please continue to send photocopies of all papers filed in this case.

Since we are quite interested in the current developments of the appeal proceedings in the Circuit Court of Appeals concerning this case, could you please provide me with the address where I may correspond with the Clerk of the Circuit Court directly.

Thank you very much for your attention in this matter.

Very truly yours,



L. Dan Tucker
Patent Attorney

LDT/sfg
attachment

5-3-69
Copy to Judge

MEHAFFY, WEBER, KEITH & GONSOULIN
ATTORNEYS AT LAW
SAN JACINTO BUILDING
BEAUMONT, TEXAS 77701

JAMES W. MEHAFFY
O. J. WEBER
ROBT O. KEITH
DEWEY J. GONSOULIN
BRYAN J. MCGINNIS
JOHN L. BELL, JR.
JAMES W. MEHAFFY, JR.

JOHN L. BELL, SR.
OF COUNSEL

May 2, 1969

Re: DuPont v. Christopher; Civil Action No. 6258

MAY 3 1969

Mr. James R. Cooney, Clerk
United States District Court
Federal Building
Beaumont, Texas

Dear Mr. Cooney:

Upon Friday, May 2, I filed a Motion to Compel Answer in this case, a copy of which I am directing to Mr. Kreager, one of the attorneys for the defendant. This is the type of matter that can best be disposed of following a brief hearing upon oral argument and I would respectfully request that you ask Judge Fisher to consider this matter and set it at a time convenient to the Court during the week of May 12, so that we may have a brief hearing on the Motion.

Very truly yours,

Robt O. Keith

For the Firm

RQK:dh

Encl. - Mr. David Kreager
Orgain, Bell & Tucker
Beaumont Savings Building
Beaumont, Texas

Monsanto

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63166
Phone: (314) 694-1000

April 15, 1969

James R. Cooney
Clerk, U. S. District Court
P. O. Box 231
Beaumont, Texas 77704

Reference: E. I. du PONT de NEMOURS & COMPANY, INC.)
vs.) No. 6258 Civil
ROLFE CHRISTOPHER and GARY CHRISTOPHER)

Dear Mr. Cooney:

Enclosed is a check in the amount of \$3.00 to cover the charges incurred in forwarding six pages of photocopy containing the petition in the above-identified civil action.

I would appreciate it very much if you would forward a photocopy of the answer when it is filed in the above-identified civil action.

Thank you very much for your attention in this matter.

Very truly yours,



L. Dan Tucker
Patent Attorney

LDT/sfc
enclosure

UNITED STATES MAGISTRATE

EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

RECORD OF PROCEEDINGS—MISCELLANEOUS

BEFORE CHARLES K. RUTH 395 10th St., Beaumont, Texas
(Name of Magistrate) (Address)

This form should be used to record proceedings for which Forms AO 100 and AO 101 are not adapted, such as applications for search warrants, extradition proceedings, depositions in civil cases, proceedings for the release of poor convicts, references in civil or admiralty cases, attachments and subsequent hearings in internal revenue matters, proceedings to settle or certify nonpayment of seamen's wages, civil rights proceedings, detentions of witnesses on removal proceedings in connection with criminal proceedings, if not included in Form AO 100, etc. A separate page should be used for each proceeding, showing the title of the case, its nature, and the date and nature of each step taken.

Magistrate's

Docket No. 71-7-147, Case No. 6258

E. I. duPONT deNEMOURS

& COMPANY, INC.
vs.

vs.

ROLFE CHRISTOPHER &

GARY CHRISTOPHER

Pre-Trial Conference

(Nature of proceeding)

[illegible]